

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE: REVIEW OF COMPLIANCE WITH SUBPOENAS
AND CURRENT OPERATION OF ISO MARKETS

STATE CAPITOL
ROOM 4203
SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 13, 2001

1:49 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair

SENATOR MARTHA ESCUTIA

SENATOR BYRON SHER

MEMBERS ABSENT

SENATOR DEBRA BOWEN

SENATOR WES CHESBRO

SENATOR MAURICE JOHANNESSEN

SENATOR SHEILA KUEHL

SENATOR WILLIAM MORROW

STAFF PRESENT

ALEXANDRA MONTGOMERY, Committee Consultant

RONDA PASCHAL, Committee Consultant

IRMA MORALES, Committee Assistant

LARRY DRIVON, Special Counsel to Committee

BOB PRATT, Legislative Counsel

ALSO PRESENT

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Department of Water Resources

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01 P-R-O-C-E-E-D-I-N-G-S

02 -- oo0oo--

03 CHAIRMAN DUNN: I've got a little bit of
 04 background material to cover just to update folks who have not
 05 been staying in tune to the events of the fall related to the
 06 investigation, and then we'll get right into our first panel of
 07 witnesses. So, as far as Mirant and Reliant representatives,
 08 get ready; we'll call you up in just a second.

09 A little bit of background to what's been going
 10 on the rest of the fall, because I've been getting a number of
 11 questions, particularly from the media, in light of the
 12 depositions that have occurred, and in this particular hearing,
 13 if somehow we've changed the focus of the investigation. And
 14 the answer to that question that I consistently get is no. We
 15 haven't changed the focus of the investigation at all.

16 We certainly have expanded it, but if you will
 17 recall when we started this way back when, we had indicated that
 18 we'll be looking at the behavior of all market participants and
 19 those with some other stake in the wholesale electricity market
 20 in California to try to come to a complete understanding of how
 21 we got into the situation that we have found ourselves this year
 22 and last, and presumably going forward at least for the time
 23 being.

24 So, the focus hasn't changed with respect to the
 25 generators. This fall has been dedicated to the production of
 26 additional documents and our review of those documents. We hope
 27 to have that review completed in the next couple of months,
 28 shortly after the first of the year. We expect at that time

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01 then to focus in on some follow-up depositions from that
 02 document review.

03 Also, Senator Morrow has taken over the
 04 leadership role in examining the municipal electricity system,
 05 and there have been substantial number of documents produced
 06 there. These are currently being reviewed. We expect some
 07 follow-up hearings and potential depositions either towards the
 08 end of the year or shortly after the first of the year.

09 When I mention the generators, I also include
 10 some of the key traders in that process as well.

11 There have been document subpoenas that have been
 12 served on Edison and PG&E which are in the process of being
 13 responded to. We do have some production response but not
 14 complete as of yet. We are working with both entities to ensure
 15 compliance with those productions. So, we continue our
 16 examination with respect to the IOUs.

17 There'll be other related parties that we will
 18 look at in the coming month or two as well, either by
 19 deposition, document subpoena, or by hearings such as this.

20 So, I want to correct any perception about the
 21 focus changing. Not at all. We're just continuing our
 22 examination of all of those market participants as well as
 23 others that we're focused on.

24 As far as the depositions that have occurred, I
 25 think we have completed somewhere around seven, eight, nine
 26 depositions at this point in time, focused as most of you are
 27 aware primarily but not exclusively on the issues surrounding
 28 the December 8th filing by ISO at FERC which had, among other

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01 impacts, the impact of removing the \$250 hard price cap last
 02 fall, approximately a year ago.

03 I've received questions about whether we are
 04 going to have a hearing related to the December 8th issue, and
 05 that we have not determined as of yet. We'll certainly give

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everybody plenty of advanced notice about those.

I also want to clarify some confusion over those depositions. Some were open to the public; some were not. The position that we are maintaining from the Committee's perspective is that the depositions, pursuant to the Senate Resolution in July authorizing the depositions, are confidential except in the case where the deponent, him or herself, requests that it be open to the public. We are honoring those requests as they come in. We have only had two; the deposition -- no, a total of three that were open to the public. They include Mr. Terry Winter, the CEO of ISO; Elena Schmidt's deposition, I believe, was also open to the public; and Jan Smutney-Jones was also open to the public. I think I've gotten all three. There might be a fourth. Oh, Jim Detmers' deposition was also open to the public. All the remaining were confidential because the deponent did not make any request that it be open to the public.

We will continue in that format as far as the confidential depositions and their availability to the public. I don't think we've received any formal requests for them via FOIA. If we get any, they will be handled in normal course and be turned over to Leg. Counsel's Office for handling, and we'll just leave it at that.

The depositions that are open to the public, if

you are seeking copies of those depositions, please contact our office. We'll tell you how it is you can gain access to one of the deposition transcripts of the depositions that are open to the public.

Okay. As far as this hearing is concerned, again, a little bit of background so everybody understands why we're here today.

We have been aware of concerns about certain ways that ISO was operating with respect to DWR for sometime now from a variety of different sources in our own investigation. We know that there was a filing made, I believe, October 18th, if my memory serves me correctly, initiated by Mirant and Reliant at FERC, which sets forth the allegations of at least those two generators. I generally say, "of the generator community," but technically that was filed by Reliant and Mirant. That provides a summary of the allegations that have been made and the ones that we have been aware of for quite sometime.

We have been trying to determine exactly, from our perspective, what is occurring; what's the validity of those allegations; what's the response. And trying to get a good handle on that is not an easy process, to be perfectly frank with everybody. And that's what led us to the hearing today.

We are not here for the purpose of trying to resolve the FERC filing. That's not our business. That's not our jurisdiction. We are simply looking at allegations concerning a market participant, in this case DWR, to determine what exactly is going on, and whether in fact it needs any legislative action; it may not. We just are not prejudging that

issue whatsoever, but that's what brings us here today.

So, unless there's any comments that other Committee Members would like to make, seeing none, why don't we call up our first panel, which includes representatives from Mirant and Reliant.

In the back, as I understand, there are some copies of the filing that was made on October 18th by Reliant and Mirant. It does not include the exhibits that were attached to that filing, but the filing itself is there if you do not have a copy of it.

Why don't we do this to maintain consistency with

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12 all of our hearings. I know we have legal counsel present, and
13 I know we have representatives from each of the two, Reliant and
14 Mirant. Why don't we go around the table, identify ourselves.
15 For those that are going to provide the main testimony, we do
16 need to swear those in. We're not going to swear all the legal
17 counsel in, but we do need to swear the individual witnesses
18 in.

19 Why don't we start over here, go around this way,
20 just identify yourself and who you represent.

21 MR. STARBIRD: Zack Starbird, in-house attorney
22 for Mirant.

23 MR. BITTMAN: Robert Bittman, outside attorney
24 for Mirant.

25 MR. HAYES: Rob Hayes, Director of Asset
26 Optimization for Mirant.

27 MR. KEBLER: Curtis Kebler, Director of Asset
28 Commercialization for Reliant Energy.

0006 01 MR. STEVENS: Charles Stevens, Stevens &
02 O'Connell, outside counsel for Reliant Energy.

03 Good afternoon, Senator.

04 MR. HOULIHAN: Terry Houlihan with McCutchen,
05 Doyle, Brown & Enersen, also outside counsel for Reliant
06 Energy.

07 CHAIRMAN DUNN: Okay. I'm assuming it's
08 Mr. Hayes and Mr. Kebler that are going to be our primary folks
09 testifying today. So, Bob Pratt, from the Leg. Counsel's Office
10 here in the Legislature, if you'd swear our two witnesses in.

11 [Thereupon ROB HAYES and
12 CURTIS KEBLER swore to tell
13 the truth, the whole truth,
14 and nothing but the truth.]

15 CHAIRMAN DUNN: It really doesn't make any
16 difference which one we have begin. I do have a prepared
17 opening statement by Mr. Hayes. Perhaps we should simply start
18 with Mr. Hayes simply because I have that here. Why don't we
19 turn it over to you for opening comments.

20 MR. HAYES: Thank you, Mr. Chairman and Members.
21 My name is Rob Hayes. I am Mirant's Director of
22 Asset Optimization for the West Region.

23 As most of you know, Mirant owns nearly 3,000
24 megawatts of electric generating capacity in the Bay Area, and
25 it's looking to expand that capacity. Mirant has already
26 invested over \$800 million in California and is actively looking
27 to invest another 500 million in additional generating
28 facilities. We proudly employ over 270 Californians.

0007 01 Since coming to California, we have always taken
02 a long-term review and that remains the case. For that reason,
03 we have fostered some of the best labor relations of any
04 generator in the state, and we have earned a reputation with the
05 ISO for being, although not perfect, an extremely reliable
06 source of energy for the State of California. Among other
07 things, our long-term focus enhances our concern about the
08 proper functioning and continued viability of the ISO's
09 real-time markets. As the Director of Asset Optimization, it is
10 my job to dispatch the power from our Bay Area plants and to
11 manage Mirant's relationship with the ISO.

12 My testimony today addresses concerns raised by
13 Mirant in filings to the FERC regarding certain operating
14 procedures under taken by the California ISO and the DWR. In a
15 nutshell, DWR has purchased high cost, out-of-state power
16 instead of buying power from the BEEP stack where, according to
17 the ISO's own reports, cheaper power was available. While the

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18 fact that cheaper power was often available is of great concern,
19 the fact that the DWR and the ISO were violating federal law,
20 the ISO's tariff, and possibly state law is of even greater
21 concern.

22 Prior to making our filing, we raised this issue
23 directly with the ISO, with whom we have always had and continue
24 to have a good, respectful working relationship. The ISO,
25 however, was unable or unwilling to provide us with an official
26 explanation. We filed our complaint to force the ISO to follow
27 the law and the tariff.

28 As detailed in our complaint, there is

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01 substantial evidence that at times the ISO and DWR bypassed
02 lower cost power available in the real-time market in favor of
03 higher priced out-of-market power. This, Mr. Chairman, is
04 wrong, and it is a violation of the Federal Power Act, FERC
05 orders, the ISO's tariff, and may be a violation of this
06 Legislature's own law, AB 1X.

07 In short, this procedure, number one, violates
08 the Federal Power Act and FERC Order 888 in that preferential
09 treatment is being conferred upon one market participant, DWR.

10 Number two, it violates the ISO tariff by
11 conferring confidential information and prejudicial liberties
12 and scheduling rights on DWR as a market participant.

13 Number three, it violates the ISO tariff by
14 placing a priority on out-of-market energy procured by DWR above
15 power available in the BEEP stack.

16 And number four, it potentially violates state
17 laws that require the DWR to procure power on a least cost
18 basis.

19 In conclusion, there is no good reason to have
20 bought more expensive power when cheaper power was available.
21 And there is no good reason why the DWR and other state agencies
22 shouldn't follow the law.

23 Thank you, Mr. Chairman. I'll be happy to take
24 any of the Committee's questions.

25 CHAIRMAN DUNN: Let's do this. Mr. Kebler, why
26 don't we go to your opening comment, and then we'll open it up
27 to what I'll call the questions for the generator panel.

28 MR. KEBLER: Very good, thank you.

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01 Good afternoon. My name is Curtis Kebler, and
02 I'm the Director of Asset Commercialization in the West Region
03 for Reliant Energy. I'm a resident of Chino Hills in Southern
04 California, and I'm based at Reliant's Etiwanda generating
05 station in San Bernardino County.

06 I'm here today to discuss the joint complaint
07 filed recently by Reliant and Mirant with the Federal Energy
08 Regulatory Commission against the California ISO. My duties
09 include the review and evaluation of the actions and decisions
10 of the ISO and their impact on Reliant. In this connection,
11 I've worked closely with other Reliant officials and legal
12 counsel in connection with Reliant's complaint against the ISO.

13 Briefly, let me offer some biographical
14 information to assist the Committee in understanding the subject
15 matters within my expertise. I'm an engineer with more than 15
16 years of experience in California's energy markets. I hold a
17 Bachelor of Science degree in nuclear engineering from the
18 University of California at Santa Barbara. I'm active in many
19 energy trade groups and professional associations. Currently
20 I'm a member of the Board of Directors of the Western Power
21 Trading Forum and the Independent Energy Producers Association.
22 I'm also a member of the California PX Governing Board, which is
23 no longer providing market services but is still in a wind-down

24 mode.

25 In their joint complaint, Reliant and Mirant
26 allege that the ISO is providing preferential treatment to the
27 California Department of Water Resources and its scheduling and
28 marketing arm, the California Energy Resources Scheduler. The

0010 complaint explains that the ISO shares with DWR forecast
01 information about real-time energy loads that are not made
02 available to other sellers. The ISO gives the DWR an exclusive
03 opportunity to procure energy to meet this load from
04 out-of-state suppliers. The ISO purchases the energy from DWR
05 regardless of whether lower priced energy is available in
06 California, and passes along the cost of these purchases to
07 participants in the ISO market.

08 Our complaint points out that the ISO's practices
09 are contrary to its tariffs and disadvantage other market
10 participants. Under the tariff, only the ISO can make so-called
11 out-of-market or OOM purchases, and it can do so only under
12 limited circumstances to deal with emergency situations. There
13 are no provisions for third parties such as DWR to make OOM
14 purchases.

15 In addition, under the tariff, the ISO is
16 supposed to meet real-time load by acquiring imbalance energy
17 from the Balancing Energy Ex-Post market, the so-called BEEP
18 stack, based on the merit order of bids received from suppliers
19 in that market. Out-of-state OOM purchases are authorized only
20 if BEEP stack energy is unavailable.

21 The ISO has not denied the core factual
22 allegations in the complaint. Rather, it has attempted to
23 justify the preferential treatment of DWR by claiming that the
24 BEEP stack is not a reliable source of real-time energy. The
25 ISO's claim, however, is unsupported and unsupportable.

26 We have asked the ISO on numerous occasions to
27 provide evidence of BEEP stack unreliability. The only example

0011 they have ever offered was based on data that was factually in
01 error, as the ISO has acknowledged.

02 On a more general level, given the low loads in
03 recent months, combined with the availability of in-state
04 supply, and the FERC's must offer requirements, it is
05 implausible that the ISO is unable to locate sufficient
06 California-based resources to satisfy reliability needs.

07 Under the FERC tariff, OOM calls are only
08 authorized when the BEEP stack resources are insufficient to
09 meet electricity load requirements. Based on the lack of ISO
10 emergency declarations, there does not appear to have been any
11 danger of falling below operating reserve criteria in the past
12 several months. It is therefore difficult to imagine even an
13 occasional justification for departing from the established BEEP
14 stack market.

15 The evidence shows, however, that substantially
16 more energy is now being purchased through OOM calls than from
17 the BEEP stack. Reliability concerns simply cannot explain
18 this shift in ISO operations.

19 To the extent that the ISO may believe that the
20 current market mechanisms are inadequate to provide reliable
21 sources of energy, the solution is to provide the existing
22 market -- is to improve the existing market mechanisms by
23 working with market mechanisms [sic], not deferring to secret
24 arrangements contrived by the new dominant buyer in the market.

25 Thank you, and I'll be happy to answer any
26 questions you may have.

27 CHAIRMAN DUNN: Senator Sher.

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01 SENATOR SHER: It would be helpful to me,
02 Mr. Chairman, if the witnesses could explain DWR's role here.
03 Your complaint against the ISO in its dealing with DWR is, DWR
04 is a seller of power?

05 MR. KEBLER: Yes. The complaint is that the ISO
06 is providing DWR with confidential, privileged information, and
07 that DWR is using that information to procure supplies
08 exclusively then from out-of-state suppliers.

09 SENATOR SHER: And the power that the DWR is
10 selling, where does that come from? Is that the power they
11 control under the long-term, these contracts?

12 MR. KEBLER: It's not clear exactly whether it
13 comes from long-term contracts or short-term purchases
14 necessarily. These purchases are almost exclusively from
15 out-of-state suppliers.

16 SENATOR SHER: I realize, but I'm more interested
17 in the source and how DWR controls it. That's what I'm trying
18 to become clear about.

19 And it's either under contracts where deliveries
20 now have to be made, or DWR is reselling that in the market; is
21 that right?

22 MR. HAYES: Senator, if I may, we are unaware as
23 market participants where the power that DWR is providing from
24 out-of-market purchases is coming from.

25 In the complaint, one of our primary concerns is
26 the fact that the DWR is itself performing a duty conferred
27 solely upon the ISO, which would have market rules that govern
28 how it makes out-of-market purchases.

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01 One of the major concerns that we have is that
02 CERS or DWR, in performing this function, is uncontrolled by
03 similar regulations.

04 SENATOR SHER: And the power that is being
05 purchased by the ISO, is that power that's being supplied to the
06 investor-owned utilities? Who buys that power?

07 The ISO is making this market and buying the
08 power to sell to whom?

09 MR. KEBLER: Actually, it's the ISO providing
10 information to DWR on the quantity of energy that's needed. DWR,
11 in turn, procures that energy from out-of-state suppliers, turns
12 around, sells the energy to the ISO. And the ISO uses the
13 energy to meet the needs of the investor-owned utilities.

14 SENATOR SHER: Sells it to the ISO, but the ISO
15 has a claim against the people who utilize it; right? The
16 utilities?

17 MR. KEBLER: Yes. These are to meet the net --
18 what I'll call the net short position of the utilities.

19 SENATOR SHER: And ISO operates as a buyer of
20 that power and a seller of that power; is that right? Then
21 turns around and sells it to the investor-owned utilities.

22 I'm just trying to get the structure of this.

23 MR. KEBLER: I think that's correct, though I
24 think the issue of whether the ISO takes title to the power, I
25 think, is a question that I'm not certain on. I don't think --.

26 SENATOR SHER: Your complaint at FERC is that the
27 ISO is giving DWR, as a seller, an unfair advantage; is that
28 right? And actually ends up buying power at a greater price

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01 than they could have obtained it for elsewhere. Is that the nub
02 of your complaint?

03 MR. KEBLER: That's right. And they do so by
04 dealing exclusively with out-of-state suppliers.

05 SENATOR SHER: The "they" in that sentence is --

06 MR. KEBLER: DWR, yes.

07 SENATOR SHER: What is the remedy you're asking
08 for in your proceeding at FERC?

09 MR. KEBLER: A series of things, most
10 fundamentally to cease and desist the current activity, and then
11 to modify its current practices so that it no longer provides
12 confidential information to a single market participant, and
13 instead, operates that real-time energy market in a manner that
14 allows all buyers and sellers to participate freely in the
15 market.

16 SENATOR SHER: So, the remedy is directed at the
17 ISO to constrain their conduct; is that right?

18 MR. KEBLER: And to have the DWR participate in
19 that market as a buyer and as a seller like all other
20 participants.

21 SENATOR SHER: Did you ask for any remedy that's
22 directed at the DWR?

23 CHAIRMAN DUNN: Can I just throw in, Senator?
24 I'm looking at the caption of it, and I don't think technically
25 it's Defendant. I think it's Respondent in a FERC proceeding is
26 only the Cal ISO.

27 SENATOR SHER: Thank you.

28 CHAIRMAN DUNN: Senator Escutia.

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01 SENATOR ESCUTIA: Thank you, Mr. Chairman.
02 It seems that a lot of this complaint arises out
03 of allegations that you believe that the Federal Powers Act has
04 been violated.

05 Can you tell me which of the provisions of the
06 Federal Power Act that you allege have been violated? You
07 obviously indicate that there's been preferential treatment
08 given to the Department of Water Resources. Anything else under
09 the Federal Powers Act?

10 While you're looking at the Federal Powers Act,
11 are there any exemptions in the Federal Powers Act that may be
12 asserted during times of an emergency?

13 MR. KEBLER: To the previous question, Section
14 205 of the Federal Power Act provides that, "no public utility
15 subject to the FERC's jurisdiction shall, with respect to any
16 transmission or sale subject to the Commission's jurisdiction,
17 grant undue preference or advantage to any person or market
18 participant, nor maintain any unreasonable difference in rates,
19 charges, services, or facilities with respect to those trans
20 actions."

21 SENATOR ESCUTIA: Now, is there any exemption to
22 that rule that would allow, say, Department of Water Resources
23 to act in this manner that you're alleging? And still, you
24 know, they claim that they have not violated the Federal Powers
25 Act.

26 MR. KEBLER: That's more of a legal question, and
27 I'm afraid I'm not able to answer that.

28 MR. HAYES: Counsel advises me, none that we're
0016 aware of.

01 SENATOR ESCUTIA: I was reading in the answer to
02 that complaint, the issue that in order to assert this complaint
03 that preferential treatment is given to the Department of Water
04 Resources that you first must prove that you are, quote-unquote,
05 "similarly situated."

06 Are you similarly situated in order to be able to
07 assert this allegation?

08 MR. KEBLER: I believe so, because in Reliant's
09 case, we are acting in a capacity as a scheduling coordinator
10 and as a generator in the market, and DWR performs exactly those
11 same functions as a scheduling coordinator through its marketing
12

13 arm, CERS.
 14 SENATOR ESCUTIA: So, you consider yourself equal
 15 to DWR?
 16 MR. KEBLER: With respect to the schedule
 17 coordination functions that are involved here, and the tariff
 18 provisions that govern what activities scheduling coordinators
 19 are allowed to perform, we are similarly situated and both
 20 obligated to comply fully with the ISO's tariff as it relates to
 21 the activities of scheduling coordinators.
 22 SENATOR ESCUTIA: Okay.
 23 CHAIRMAN DUNN: I want to take a step back. Let
 24 me direct them to Mr. Hayes just because, and Mr. Kebler, if you
 25 want to add in, that's fine.
 26 I know some of the individuals that are here may
 27 not be familiar with all the issues we're dealing with. When
 28 we're talking about CDWR, of course, it's the California
 0017 Department of Water Resources. Then we have CERS, which is
 02 C-E-R-S.
 03 Mr. Hayes, can you identify for us what CERS
 04 actually is?
 05 MR. HAYES: Our understanding of CERS, that is an
 06 acronym for the California Electricity Resource Scheduler, if
 07 I'm not mistaken.
 08 CHAIRMAN DUNN: I think you're correct.
 09 MR. HAYES: CERS, being a subsidiary or an
 10 affiliate of the Department of Water Resources, whose charge
 11 primarily is to buy the needs of the investor-owned utilities at
 12 short position.
 13 CHAIRMAN DUNN: You would agree from a layman's
 14 perspective, it's the arm of DWR that makes the purchases, et
 15 cetera, associated with electricity.
 16 MR. HAYES: Yes, sir.
 17 CHAIRMAN DUNN: Other than DWR itself, because it
 18 owns a little tiny slice of hydro, I think, unrelated to that,
 19 CERS does all the other activity; correct?
 20 MR. HAYES: On behalf of the investor-owned
 21 utilities, yes.
 22 CHAIRMAN DUNN: Either Mr. Hayes or Mr. Kebler,
 23 can you give us a little bit of how this market works, what the
 24 BEEP stack is, how you under normal circumstances get to an OOM,
 25 O-0-M, purchase just so we have that background.
 26 MR. HAYES: By way of brief background, as it is
 27 a fairly complicated structure, but in essence the real-time
 28 markets of the California ISO operate such that all bilateral
 0018 trading is to be completed two hours before the hour in which
 02 service begins, and schedules on behalf of each schedule
 03 coordinator are to be submitted to the ISO as to the resources
 04 being utilized to meet load obligations, either native load or
 05 contractual.
 06 During the hour, because it is necessary in
 07 electric power systems, since power cannot be stored, power
 08 generation has to be dispatched real-time to meet actual
 09 real-time load obligations. The ISO market mechanisms,
 10 according to the tariff, are that the ISO is to turn first to
 11 what's termed the BEEP stack.
 12 The BEEP stack is a stack of resources that is
 13 created by the ISO upon receiving information from scheduling
 14 coordinators the amount of megawatts and the price at which they
 15 are willing to serve load out of their available resources in
 16 the real-time market.
 17 CHAIRMAN DUNN: In other words, Mr. Hayes, again
 18 for the lay person, you've got scheduling that's occurred all

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19 the way up to an hour ahead, but it still may be a little off
20 supply and demand. And the BEEP stack is designed to correct
21 for that.

22 MR. HAYES: That would be two hours ahead, and
23 then the BEEP stack is intended to meet that, utilizing least
24 cost available resources.

25 CHAIRMAN DUNN: In other words, ISO selects, the
26 way the theory was to work, ISO selects the least cost
27 electricity out of that BEEP stack to satisfy this imbalance
28 that we're trying to correct.

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01 MR. HAYES: That is correct.

02 CHAIRMAN DUNN: Continue, if you would.

03 MR. HAYES: I think that fairly will covers it,
04 at least the higher level concept of the BEEP stack.

05 As far as OOM, or out-of-market purchases are
06 concerned, as provided in the tariff, out-of-market purchases
07 are a mechanism available solely to the Independent System
08 Operator as a means to purchase power from out-of-market
09 resources at times when emergency conditions exist and there is
10 not enough power available through the BEEP stack process.

11 CHAIRMAN DUNN: Okay, and from the concerns,
12 again, trying to overlay the concerns both of you mentioned in
13 your opening statements to the way the system is supposed to
14 work, the concerns are, A, there is confidential information
15 being shared with DWR, from your perspective.

16 MR. HAYES: That's correct.

17 CHAIRMAN DUNN: And B, that information is being
18 used to bypass power that may be in the BEEP stack that then
19 goes to out-of-market purchases; correct?

20 MR. HAYES: That is correct.

21 CHAIRMAN DUNN: I'm being corrected by Senator
22 Sher, and correctly so, I think, that the allegation is that ISO
23 is bypassing cheaper power in the BEEP stack and reaching more
24 expensive power in the out-of-market purchases.

25 MR. HAYES: Evidence would suggest that in many
26 times, the power available in the BEEP stack is cheaper.

27 MR. DRIVON: On that point, I have information,
28 and I don't know whether you do or not, either of you, but I

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01 have information that one of the generators tested that issue by
02 bidding zero into the BEEP stack, and that bid was declined.

03 Have either of you heard of that information?

04 MR. HAYES: Mirant itself has not performed such
05 a test. I have heard that those types of tests have been
06 performed by other suppliers.

07 MR. KEBLER: I don't have any specific
08 information, though I do know that the ISO and DWR are relying
09 almost exclusively in many instances on the out-of-market
10 mechanism to procure real-time energy, and therefore bypassing
11 other supply sources in the state.

12 MR. DRIVON: Varying the question just a little
13 bit, are either of you aware of specific instances in which more
14 expensive BEEP stack energy was -- cheaper BEEP stack energy was
15 bypassed for more expensive OOM energy?

16 MR. HAYES: By way of reference, one citation to
17 the Department of Market Analysis Reports, I think, is
18 appropriate.

19 Throughout several months, starting back around
20 the March or April timeframe, it was clearly outlined in the
21 Department of Market Analysis Reports that not only were
22 significantly higher volumes of out-of-market energy purchased
23 due to the unlawful delegation of the out-of-market purchasing
24 authority to the DWR/CERS, but also that those purchases were

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25 made at prices significantly higher than information reported by
26 the Department of Market Analysis as to what was available in
27 the BEEP stack.

28 MR. DRIVON: Specifically, I understand that on

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01 at least one occasion by way of example, that the ISO backed
02 down available energy from Mojave coal plant for a very
03 significant amount of energy at \$60 a megawatt hour in order to
04 accept a bilateral contract at \$400 a megawatt hour.

05 Are you aware of that particular incident?

06 MR. HAYES: We have read the press reports about
07 that incident.

08 SENATOR ESCUTIA: Larry, can you explain what you
09 mean by back down?

10 MR. DRIVON: Can you explain what I mean by back
11 down?

12 MR. KEBLER: Reduce the output of the Mojave
13 generating station, so its output level is reduced from whatever
14 level it was operating at to a lower level to accommodate the
15 energy supply from the other contract.

16 CHAIRMAN DUNN: And if I can interrupt because I
17 want to flesh that out.

18 Understand we've got lots of lay folks here, both
19 out in the audience and sitting up here.

20 How is that relevant? Why is the question that
21 Mr. Drivon posed to you about the back down there important
22 here?

23 MR. KEBLER: Because in that circumstance,
24 you've got \$60 energy that's available in the market, and you're
25 dispatching that energy down in order to accommodate higher
26 priced energy.

27 MR. DRIVON: Let me see if I understand this.

28 Let's just say Mojave is capable of producing 500

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01 megawatt hours at \$60 a megawatt hour, and they bid that into
02 the market. It's initially accepted, and then there is a back
03 down order, which means, cut that back to 100 megawatt hours.
04 We'll pay you \$60 bucks an hour for those 100 megawatts, and
05 we'll buy the other 400 for 400 an hour; is that right?

06 MR. KEBLER: Actually in this instance, it's
07 actually the generator, if they're agreeing to decrement their
08 resource, reduce the output, they're actually paying to do
09 that. They're willing to pay because they're avoiding then the
10 cost of producing the energy.

11 MR. HAYES: One note. To the extent that that
12 generator's offered to reduce generation as a positive number.
13 The ISO tariff does provide for those numbers to be negative,
14 which in effect, if you are paying a negative number, you are
15 being paid then to decrease your generation.

16 MR. DRIVON: Okay. And who ultimately pays the
17 bill when that happens?

18 MR. KEBLER: If a resource is dec'ed, then that
19 entity that decs its resource is paying the ISO to dec the
20 resource. There are other entities that are over producing
21 relative to what their schedule is, and they are then receiving
22 that dec price. So, the incentives are designed to ensure that
23 loads and resources remain in balance on a continuous basis.

24 MR. DRIVON: When somebody flips a light switch,
25 that light is going on at \$400 an hour instead of 60. Is that
26 the bottom line?

27 MR. KEBLER: That would be the case.

28 MR. DRIVON: I mean, after you get done with all

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01 of the technical talk, in a back down situation like we've just

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02 outlined, which I think has been widely reported, that
03 particular incident, when a fellow goes over and flips the light
04 switch, that light is burning \$400 an hour energy instead of \$60
05 an hour energy; is that right?

06 MR. KEBLER: Correct.

07 CHAIRMAN DUNN: Senator Sher.

08 SENATOR SHER: This is really not a question for
09 the witnesses but for our consultant on the case that he's been
10 reviewing that's been reported.

11 The \$400 a megawatt hour power was power that DWR
12 controlled under a bilateral contract; is that right? And
13 that's what it sold to the ISO?

14 MR. DRIVON: That is our information, yes,
15 Senator.

16 SENATOR SHER: My question is, and this is just
17 to put this in context, we have read also in the media that DWR
18 controls power under contracts that is due and deliverable, and
19 has to be paid for at the contract price, that they have turned
20 around and resold at a lower price in order to dispose of it,
21 the power that wasn't needed, I guess, otherwise.

22 So, my question is, suppose they had turned
23 around and resold this at \$60 a megawatt hour, the same thing it
24 was available for elsewhere, in order to cut their losses, and
25 maybe this is a question for you, would that have been a
26 violation of the Federal Power Act and the ISO tariff, and all
27 the other things, the basis of your filing at FERC?

28 In other words, they sell it at a lower price
0024 01 than what it cost them, but equivalent to or less than what
02 would otherwise be available from the BEEP stack, if I've got
03 that terminology correct.

04 MR. HAYES: If I understand your question,
05 Senator Sher, maybe if I could break it into parts.

06 Your first question is, if DWR, or any other
07 market participant, resold the power that they had under
08 contract for some other price, is that a violation of the
09 Federal Power Act? And I think the answer --

10 SENATOR SHER: It wouldn't be a violation just
11 because they sold it for less than they're paying for it, but
12 the question is, would it be a violation if they sold it in
13 competition with, but at an equivalent price, for what was
14 available in this mechanism, the BEEP stack?

15 MR. HAYES: I think as long as they are
16 performing the activity of selling that power in accordance with
17 all of the tariff provisions and other regulations that set
18 forth the market rules, I don't think that would be of concern.

19 The real concern in the violation of those tariff
20 provisions and of the Federal Power Act is the preferential
21 treatment and the unlawful delegation.

22 SENATOR SHER: Again, to reduce it to its
23 essence, you're complaining about the ISO protecting the DWR and
24 its obligation on its long-term contracts in allowing them to
25 unload that so they don't suffer any loss on those contracts.

26 MR. HAYES: We have no knowledge of the treatment
27 of the long-term contracts.

28 SENATOR SHER: This case you put was one in which
0025 01 it was bilateral power -- power controlled under a bilateral
02 contract at a price of \$400 a megawatt hour, which they sold to
03 the ISO at \$400 a megawatt hour when, in fact, there was other
04 power available to the ISO at \$60 a megawatt hour, if I
05 understood your case.

06 MR. DRIVON: But all bilateral contracts are not
07 necessarily long-term bilateral contracts.

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08 SENATOR SHER: But this was power that became
09 deliverable at the time in question, and the purchase price of
10 \$400 a megawatt hour became payable at that time in
11 question.

12 MR. DRIVON: That's right, but what we don't know
13 is, we don't know when that contract was negotiated, or what the
14 consideration for that contract may have been. If that
15 bilateral contract was made in, you know, a very short-term way,
16 then it's not a long-term contract, unquote.

17 There are a lot of very difficult to understand
18 definitional problems with respect to this. I've asked some of
19 these same questions and have been equally as frustrated.

20 SENATOR SHER: I would just send from my
21 questions, delete "long-term." It's just the fact that it's a
22 contractual obligation at \$400 which they want to dispose of.

23 The base of the question is all the media
24 attention to sales being made by the DWR at a price lower than
25 what it was contracted for by the DWR.

26 Okay, I'm just trying to get myself oriented
27 about what's going on here.

28 CHAIRMAN DUNN: Senator Escutia.
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01 SENATOR ESCUTIA: Mr. Chairman, I think I heard
02 one of the gentlemen there saying that -- I think it was you,
03 Rob -- I think you indicated that when your power is not used,
04 that you get paid for it. Did you indicate something like
05 that? That it was part of this paying for the dec.

06 MR. HAYES: Yes.

07 SENATOR ESCUTIA: Who pays you, and what amount
08 do they pay you?

09 MR. HAYES: Let me attempt to explain the dec
10 process.

11 By the very same token that the ISO, in
12 maintaining the reliability of the system, may have to increase
13 generation to meet load, they may also have to decrease
14 generation to meet load at the same time.

15 There are provisions whereby scheduling
16 coordinators can submit offers to back down their generation,
17 either positive numbers or negative numbers according to the
18 tariff, in order to meet those obligations. The ISO will then,
19 in turn, ask a generator to decrease their generation for the
20 offer which they have supplied to the ISO if that is, indeed,
21 necessary.

22 I think your question, Senator, was who
23 ultimately pays for that?

24 SENATOR ESCUTIA: Right. You said that if your
25 power is not being used, I think you indicated somebody pays for
26 it.

27 MR. HAYES: Not that it's not being used --

28 SENATOR ESCUTIA: For having the power available.
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01 MR. HAYES: It's not that it's not being used,
02 but if the ISO specifically asks you, as a part of their market
03 mechanism, to decrease your generation, then there are certain
04 provisions whereby either a scheduling coordinator may pay to
05 have their generation decreased, or may in fact be paid to have
06 their generation decreased, depending on whether their dec bid,
07 as it is called, is positive or negative.

08 CHAIRMAN DUNN: If I can just flesh that out,
09 Senator Escutia, the theory being that it may cost \$20 to
10 produce that energy, and I will take some amount on that \$20 so
11 I don't lose the whole \$20 by just producing it, yet unable to
12 sell it.

13 MR. HAYES: A scheduling coordinator may say, for

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14 instance, I'd be willing to pay \$15 not to have to incur costs
15 of \$20.

16 CHAIRMAN DUNN: There we go.

17 SENATOR ESCUTIA: But who is the one who is
18 paying? The person who's paying, is that the generator? Is that
19 the person who asked you to decrease your load? Is that the
20 person who pays you?

21 MR. HAYES: According to the tariff, parties that
22 are net suppliers to the ISO are actually being paid what they
23 call the dec price. So, if the dec price is positive, then
24 generators who are over-supplying are being paid that price, and
25 if it's negative, then they are paying that price, as it were.

26 SENATOR ESCUTIA: You said generators who are
27 over supplying --

28 MR. HAYES: Any scheduling coordinator, I'm

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01 sorry.

02 SENATOR ESCUTIA: Any generator who's
03 over-supplying?

04 MR. HAYES: Any scheduling coordinator. It's a
05 finer point distinction, but it is very important. All
06 participants in the ISO market are scheduling coordinators.
07 CERS, PG&E, for instance, are scheduling coordinators.

08 SENATOR ESCUTIA: The Department of Water
09 Resources also?

10 MR. HAYES: That's correct.

11 SENATOR ESCUTIA: Do they also have to pay?

12 MR. HAYES: To the extent that they are supplying
13 more than they were scheduled to supply, then yes.

14 In the instance that was mentioned earlier,
15 whereby I think it was -- the scenario was outlined that CERS
16 was providing more power through an out-of-market purchase than
17 the system needed. They would, in fact, be paying, if it were a
18 negative dec bid, they would be paying that price for the power,
19 which ultimately would be absorbed by the consumers.

20 SENATOR ESCUTIA: So, CDWR is treated the same
21 like any other generator that, if they over supply, then they
22 have to pay the dec.

23 MR. HAYES: That's correct.

24 SENATOR ESCUTIA: They're not exempt from making
25 that payment.

26 MR. HAYES: That's correct.

27 MR. DRIVON: Do you know whether that in fact is
28 what's been happening? Has CERS/DWR been having been assessed

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01 their dec?

02 MR. HAYES: I have no personal knowledge of how
03 CDWR or CERS settlement statements are.

04 MR. DRIVON: So, what you're saying is, they're
05 supposed to participate in the negative or positive dec.

06 Do you know whether in actuality they are?

07 MR. HAYES: I have no knowledge as to whether or
08 not they are in actuality.

09 SENATOR ESCUTIA: Oh, so then you're saying --
10 I'm sorry. Let me just follow up, Counselor.

11 Are you saying then that even though they have
12 the obligation to pay this dec, pay for the dec, we don't know
13 for a fact if CDWR has actually been paying for it?

14 MR. DRIVON: That's right. I don't know.

15 SENATOR ESCUTIA: And if CDWR does not pay for
16 it, then what's the impact of that? Is that why you're saying
17 that John Doe can turn on the switch, and then that energy is
18 more expensive than otherwise?

19 MR. DRIVON: I can't assess that particular last

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20 part of the scenario, but I think we need to find out, perhaps
21 from some of the later witnesses, whether or not all the market
22 participants are being equally treated with respect to how the
23 inc and decs are handled.

24 SENATOR ESCUTIA: I see. Thank you.

25 CHAIRMAN DUNN: I want to back up a little bit,
26 if I can.

27 I want to link the issue of the allegation that
28 there is confidential data being shared by ISO with DWR or CERS
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01 with the issue of bypassing less expensive power in the BEEP
02 stack to reach OOM purchases.

03 What confidential information do you believe is
04 being shared? And how does that allow for a mechanism to bypass
05 BEEP to reach OOM purchases?

06 Mr. Hayes.

07 MR. HAYES: ISO has published a procedure that it
08 has in place with CERS that allows CERS to make the
09 out-of-market purchases. This is the procedure upon which the
10 complaint has been filed, as it is in violation of the tariff.

11 That procedure sets forth a timeline whereby at
12 -- you'll have to forgive me, Mr. Chairman. I don't remember
13 the exact times, but I believe it is somewhere in the
14 neighborhood of one hour prior to the hour that delivery is to
15 take place, which is already, again, inside of the normal time
16 period whereby schedules have been closed.

17 One hour prior to that time, ISO communicates to
18 CERS the amount of energy they expect to be needed in the
19 real-time market. CERS then goes forth, utilizing that
20 information, and performs a procurement function and
21 communicates back to the ISO the amount of power that they
22 purchased. And our understanding is that they also communicate
23 at that time at what price the power has been purchased.

24 Those purchases are taking place on a priority
25 basis to the dispatch of BEEP stack resources, as is provided
26 for in the tariff.

27 CHAIRMAN DUNN: Again, from the lay perspective,
28 the confidential information from your perspective as Mirant
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01 and, I assume, Reliant -- and Mr. Kebler, correct me if Reliant
02 has a different perception here -- the confidential information
03 that you believe is being shared by ISO with CERS is the
04 information of basically what their need is in the real-time
05 market; their, ISO's, need in the real-time market.

06 MR. HAYES: Yes, Mr. Chairman.

07 One additional item, that it is our
08 understanding, according to that procedure that is being shared,
09 it's also the depth or the amount of megawatts that are going to
10 be available in the BEEP stack, as well as the various prices in
11 the BEEP stack at that point in time.

12 CHAIRMAN DUNN: So, you believe that ISO is
13 sharing the following information, confidential information.
14 I'm assuming all of the items you just identified are all
15 confidential, pursuant to various tariffs.

16 MR. HAYES: That's correct.

17 CHAIRMAN DUNN: Is the amount of energy that will
18 be necessary in that real-time market, in other words the
19 imbalance, what's available in the BEEP stack, and third, the
20 price of that power in the BEEP stack.

21 MR. HAYES: That is our understanding from the
22 procedure that ISO has published.

23 CHAIRMAN DUNN: And it's your belief that upon
24 receipt of that information, that then CERS makes purchases,
25 out-of-market purchases, and the price and amount of energy

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26 purchased via that out-of-market purchase by CERS is then
27 disclosed to ISO?

28 MR. HAYES: That is our understanding.

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01 CHAIRMAN DUNN: What happens next from your
02 perspective? That information is shared with ISO as far as CERS
03 purchase price and amount?

04 MR. HAYES: Our understanding, according to the
05 procedure, is that ISO then schedules that power to be delivered
06 during that hour at the relevant point where it is being
07 delivered.

08 To the extent that too much generation is being
09 delivered to the market, they then have to decrease other
10 generators.

11 To the extent that generation over and above what
12 the CERS has purchased on an out-of-market basis is needed, they
13 then turn to the BEEP stack and dispatch generators that have
14 offered power.

15 CHAIRMAN DUNN: And I may be repeating it, but if
16 the information that CERS gives back to ISO regarding its
17 out-of-market purchases -- how much it purchased and for what
18 price -- if that resulted in too much energy, is there something
19 that you believe happens at that point in time? Do they dec the
20 BEEP stack at that point?

21 MR. HAYES: As they move into the real-time
22 market, it would be necessary for them to dec the BEEP stack to
23 maintain --

24 CHAIRMAN DUNN: And you believe that's occurring.

25 MR. HAYES: Our understanding is that there have
26 been occasions when that has occurred, yes.

27 CHAIRMAN DUNN: Mr. Kebler, do you disagree with
28 anything?

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01 MR. KEBLER: No. I do have one other, I guess,
02 perspective that I think is important in terms of your
03 understanding of how the real-time market works, and how these
04 OOM transactions play into the real-time market. And that is
05 that the BEEP market, as we call it, is a ten-minute market.
06 So, an entity that submits a bid in the BEEP market is
07 submitting a bid that is dispatchable for ten minutes. The bid
08 itself is actually standing for one hour, but when the ISO, if
09 it's a bid to increment supply, increase the output generating
10 unit, the ISO has the ability to call on that bid, inc that
11 generating unit, and after ten minutes, if it decides that it no
12 longer needs the energy from that unit that has just been
13 inc'd, it can withdraw that instruction, and the unit no longer
14 has to produce the additional power.

15 So, it's a ten-minute dispatch market. That's
16 the way the real-time BEEP market functions.

17 The OOM market is a 60-minute market. So, when
18 the DWR makes a bilateral transaction with an entity, say, in
19 the Northwest through an OOM purchase, that's a bilateral trade
20 that is a trade that is a 60-minute transaction.

21 The significance of this is that the BEEP market
22 is the market on which market participants rely to get a sense
23 of how to change the output of their resources in real time.
24 They look at that price signal from the BEEP to get a sense of,
25 has the market got adequate supply or not, and they can then
26 dispatch their own resources consistent with that real-time
27 price signal.

28 And this applies to municipalities, generators,

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01 electric service providers. Anybody that has resources in the
02 market looks to the BEEP price to know what the status of the

03 system is, and whether more supplies are needed or less. So,
04 it's the critical price signal for balancing loads and resources
05 in real time.

06 Because such a large quantity of the transactions
07 in real time are being dealt with through OOM purchases, the
08 value of the real-time price signal is greatly diminished, and
09 in many instances, it's meaningless. And what that means is,
10 people that are trying to dispatch their resources in the most
11 efficient manner possible have difficulty because there is no
12 reliable price that they can look to, to know whether it makes
13 sense to increment or decrement their resource in real time.

14 And the reason for that is, the OOM purchases
15 don't -- while they occur in real time, and the energy gets
16 delivered in real time, the settlement impact of those
17 transactions don't flow through to the market participants
18 until, say, two months later. So, if you're a generator or a
19 load, and you're looking at that real-time BEEP price, and you
20 decide that it makes sense to alter the output of your unit
21 consistent with that price signal, the price signal may be
22 completely misleading because it doesn't reflect these OOM
23 transactions that are also being figured into the market.

24 So, the significance of all of that is, is that
25 if we had a well functioning BEEP market, where all the
26 Northwest supplies, the out-of-state supplies and the in-state
27 supplies were in one market that was being cleared efficiently,
28 there would be an efficient price signal that comes out of that

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01 process, and the overall dispatch of the entire system would be
02 improved.

03 CHAIRMAN DUNN: I want to touch upon a little bit
04 of history.

05 When did you first come to the conclusion that
06 this sharing of confidential information and potential bypassing
07 of the BEEP energy was occurring?

08 MR. HAYES: This was a fairly complex process.
09 As Mr. Kebler referenced, there is a significant delay in the
10 time that invoices are received, or settlement statements are
11 received from the ISO, from the time that power actually flowed.

12 Mirant began to receive invoices for the
13 April-May timeframe a couple of months after those months. And
14 in reviewing those invoices, began to notice that we were being
15 charged significantly more for power that we were purchasing
16 from the ISO than the prices that ISO had published would have
17 indicated we would have been charged.

18 As a result of that, we began to pursue
19 communications with ISO personnel, both verbal and written
20 communications, in an effort to gain an understanding of why we
21 were being charged more for power than the ISO had published
22 that we would be charged.

23 Through the course of those conversations,
24 various issues were highlighted to us. We performed a review of
25 the some of the Department of Market Analysis Reports that
26 indicated that significantly more power at significantly higher
27 prices were being purchased through out-of-market purchases.
28 So, that was one mechanism

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01 The Department of Market Analysis reports,
02 discussions with ISO personnel.

03 Finally, I believe the first time it was ever
04 very clearly spelled out for the market participants in a public
05 forum was the September 19th, I believe it was, Market
06 Information Forum Call, wherein Mr. Alaywan, Ziad Alaywan,
07 defined for market participants the fact that CERS was in fact
08 performing the out-of-market purchasing function.

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09 CHAIRMAN DUNN: Going to Mr. Kebler for just a
10 second on behalf of Reliant, those Market Issue Forum Calls, if
11 I said that correctly, just for those unfamiliar, what are
12 those?

13 MR. HAYES: Those are calls that the ISO staff
14 undertakes to alert market participants --

15 CHAIRMAN DUNN: Literally, telephone calls.

16 MR. HAYES: Literally conference calls. Those
17 telephone calls, conference calls, occur for ISO personnel to
18 alert market participants of issues that they are either dealing
19 with or will be taking to their board, for instance, at the next
20 ISO forum meeting.

21 CHAIRMAN DUNN: And Mr. Kebler, on behalf of
22 Reliant, did Reliant come to its conclusion that, of course,
23 resulted in the FERC filing, via the same method that Mr. Hayes
24 just identified?

25 MR. KEBLER: Yeah, generally that's the case,
26 reviewing settlement statements, and then through the MIF
27 conference calls and other stakeholder meetings, and so forth,
28 we began to collect information, reviewing Department of Market

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01 Analysis Reports. And through that process, began to get a
02 sense of what was going on.

03 CHAIRMAN DUNN: Did you also have communication
04 directly with ISO after you came to the conclusion that this was
05 occurring?

06 MR. KEBLER: Yes. We've had a number of
07 discussions with the ISO. And I'll say that from the ISO's
08 perspective, what they have communicated to us is that the
09 reason that they rely on these out-of-market purchases is that
10 the resources within the BEEP stack do not perform reliably when
11 dispatched.

12 CHAIRMAN DUNN: Let me stop you there, because I
13 think you made mention of that in your opening statement, if I
14 recall it correctly.

15 From your perspective, what is it they were
16 trying to communicate? We'll bring ISO up here in just a
17 minute, but I just want to know from your perspective, what is
18 it they were saying when the BEEP stack was unreliable?

19 MR. KEBLER: What they're saying is that when
20 they call on a resource out of the BEEP stack, that resource is
21 supposed to respond and comply with that instruction within the
22 ten-minute period. And when they dispatch the resource, send
23 the instruction, the resources are not responding timely enough.
24 And ISO, therefore, has to go further into the BEEP stack,
25 dispatch another resource, and in order to get adequate supplies
26 on line to balance loads and resources. Because the function of
27 the BEEP stack, again, is to continuously balance loads and
28 resources.

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01 And their claim or position is that, often times,
02 the resources in that stack are unreliable, and therefore the
03 reason that it resorts to out-of-market purchases is to get the
04 certainty of supply that comes through an OOM transaction.

05 CHAIRMAN DUNN: Has ISO ever presented to you any
06 data that showed the unreliability?

07 MR. KEBLER: They have in our case. They have in
08 one particular case.

09 They conducted an experiment -- and this was
10 their description of it -- of the performance of the BEEP stack,
11 and it focused on a particular day and a particular couple of
12 hours. And as a result of that, the ISO produced information
13 with respect to Reliant's plants.

14 We, in evaluating that information, concluded

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15 that the data that was in the ISO analysis was flawed, and that
16 the representations that had been made about the unreliability
17 of our resources in complying with those dispatch instructions
18 were in fact based on incorrect data, and that the data that we
19 had, which the ISO subsequently agreed with, demonstrated that
20 the units complied substantially at dispatched by the ISO.

21 And this is really key, because if the issue is
22 that the resources in the BEEP stack are not reliable, then we
23 need to get accurate information from the ISO about exactly what
24 that situation is and have that occur on a generator-specific
25 basis.

26 I can't speak for any of other generators, but in
27 our case, while this representation has been made over and over
28 again about the unreliability of the BEEP stack, we've not

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01 received any data that is supportable that demonstrates that to
02 be the case for our units.

03 CHAIRMAN DUNN: Mr. Hayes, same question to you
04 re: Mirant.

05 MR. HAYES: Mirant has not seen any conclusive
06 evidence that shows that the BEEP stack is an unreliable
07 resource, nor has Mirant seen any conclusive evidence that its
08 facilities are unreliable.

09 In fact, Mirant greatly prides itself on being a
10 reliable supplier and has had that status reaffirmed on numerous
11 occasions by ISO personnel.

12 CHAIRMAN DUNN: I believe that, and correct me if
13 I'm wrong, both Mr. Hayes on behalf of Mirant and Mr. Kebler on
14 behalf of Reliant, you stated that you are not certain whether
15 -- apology, lay terms here -- the beneficiary of the OOM
16 purchases is the long-term contracts. Am I correct that on
17 behalf of both companies you are uncertain as to whether that is
18 in fact true?

19 MR. HAYES: I think that is correct, that we are
20 uncertain.

21 MR. KEBLER: That's correct in Reliant's case.

22 CHAIRMAN DUNN: Has there been, and I'll just ask
23 two questions together, and I'll start with you, Mr. Hayes.

24 What have you done to examine that issue, and
25 what do you believe can be done to determine whether in fact the
26 primary beneficiary of the OOM purchase are the long-term
27 contracts?

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01 In an effort to address the issue,
02 again, this goes back to conversations about the settlement
03 statements, but many conversations have been had with ISO
04 personnel by Mirant personnel in an effort to gain a better
05 understanding of why we were being charged the prices that we
06 were being charged.

07 In the context of those discussions, it was
08 relayed to myself and other Mirant personnel that there was this
09 situation that existed where CERS was performing the OOM
10 procurement function, and that it was unclear at best as to
11 where that power was coming from, and whether or not that power
12 was in fact being utilized from the long-term contracts that
13 CERS had signed.

14 In terms of what can be done to ascertain that, I
15 think it would -- if the question is, how do we find out whether
16 or not long-term contracts are being utilized; is that correct,
17 Mr. Chairman? I believe it would require more or less a full
18 audit of CERS procurement procedures, both long-term and
19 short-term.

20 CHAIRMAN DUNN: And you believe a full audit
would disclose whether the primary beneficiary of the OOM

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21 purchases are the long-term contracts?

22 MR. HAYES: I believe that would be the case,
23 yes.

24 CHAIRMAN DUNN: Mr. Kebler, anything different?

25 MR. KEBLER: Well, I guess the only thing that I
26 would add is again to emphasize the issue of the real-time price
27 signal, and the effect that that has on all market participants
28 in terms of the way they dispatch their resources.

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01 And that's very significant because the way these
02 OOM transactions are working, essentially DWR is the only entity
03 in the market that has accurate information about what the
04 real-time price is, because it has information confidentially
05 from the ISO on quantities and prices in the BEEP stack, and it
06 also knows, through its bilateral transactions with the
07 out-of-state suppliers, what it's willing to pay them. So, it
08 has a more complete picture of what the cost of real-time
09 transactions are.

10 The rest of the market is relying essentially
11 exclusively on the BEEP price signal, and therefore, they don't
12 have accurate information about the real-time price, and
13 therefore, inability to dispatch resources in the most efficient
14 manner possible.

15 CHAIRMAN DUNN: Without referencing which
16 deposition, one of the depositions, I believe, in exploring this
17 issue indicated that it was that person's belief that all the
18 long-term contracts, the power delivered by long-term contracts,
19 was scheduled ahead, and therefore could not be a beneficiary of
20 an OOM purchase.

21 Does the fact that they're scheduled ahead --
22 let's just assume that that's correct for argument's sake.

23 Would that remove the long-term contracts as a
24 potential beneficiary of the OOM purchases?

25 MR. HAYES: Any secondary agreements that would
26 backstop those, if they were completely scheduled ahead and no
27 secondary agreements between those counter parties had taken
28 place -- excuse me, between those two contracting parties had

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01 taken place, I would think that that would be the case, but I'm
02 unaware.

03 MR. KEBLER: I think the one possible exception
04 to that may be instances where, if there is an over supply
05 situation, where as a result in part of the contracts, there's
06 too much supply scheduled in the market and resources, there may
07 be resources in the real-time market that are more cost
08 effective than some of the resources that have been forward
09 scheduled. So, in that instance, that impact could result.

10 CHAIRMAN DUNN: Are you aware of whether any
11 statistical study has been done on what the average BEEP price
12 was versus the average OOM price was for the time period in
13 question?

14 MR. HAYES: Yes. The ISO's Department of Market
15 Analysis monthly publishes a report that performs that very
16 function and reports those numbers to the ISO Board of
17 Governors.

18 CHAIRMAN DUNN: Is it your understanding that,
19 say, for the past six months, that the OOM price average has
20 been higher than the BEEP price average?

21 MR. HAYES: As a general rule, the Department of
22 Market Analysis Reports show that the OOM prices have been
23 significantly higher than the BEEP prices. I can't say that's
24 true for every month, but as a general rule, that is the case.

25 CHAIRMAN DUNN: Do you know if in the BEEP price
26 average, both inc and dec bids are averaged in?

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27 MR. HAYES: That is my understanding of how those
28 numbers are calculated, but that is -- we have never seen the
0043 details of those calculations.

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02 CHAIRMAN DUNN: Mr. Kebler, and then we'll go to
03 Senator Sher.

04 MR. KEBLER: Just to clarify that, Mr. Chairman,
05 I think it's important when comparing the prices in the BEEP
06 stack and the price of OOM transactions, it's critically
07 important to remember that these are really two different
08 markets, because one is a ten-minute market, and one is a
09 60-minute market. And so, it simply isn't enough to say that
10 were it even the case that the OOM transactions are cheaper,
11 that's not the entire picture because that's a 60-minute market.

12 And the real question is whether, if we had taken
13 all those OOM transaction quantities, put them into one
14 real-time market that is functioning effectively and clears at
15 an efficient price, whether we would have as a result a lower
16 overall cost of procuring resources in real time to balance the
17 system. And that's a difficult question.

18 It may be an unknowable question to answer, but
19 fundamentally, it goes back to that question of optimal
20 dispatch. And we aren't going to know whether we're having
21 optimal dispatch unless we've got all the supplies, both the
22 out-of-market supplies and the in-state resources, into one
23 market that clears efficiently at a given price.

24 CHAIRMAN DUNN: Understood.

25 Senator Sher.

26 SENATOR SHER: Mr. Chairman, your line of
27 questioning has been helpful to me to describe the process, and
28 the response of the witnesses as well.

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01 But right there at the end I became confused
02 about the scheduling of these contracts that the Department of
03 Water Resources has entered into.

04 I think the statement was made that those do get
05 scheduled in with the ISO. If that's true, all of these
06 contracts where DWR knows power that is deliverable on certain
07 days, they will furnish that information to the ISO, and that
08 will be scheduled, and presumably, it will be sold at the price
09 that DWR is obligated to pay, because that is authorized under
10 statute, that they're entitled to get their revenue requirements
11 to cover these; is that right?

12 So that, if they're handling it correctly, they
13 know from day-to-day how much power they're obligated to take
14 under the contracts they've entered into. They know what their
15 obligation is to pay for it, and they're protected.

16 And that is not part of this problem. So, those
17 contracts are already covered, and they would, therefore, not
18 need this, as you allege, confidential information to give them
19 an opportunity to furnish that power in lieu of power you think
20 ought to be taken from other generators.

21 Am I right about that?

22 MR. KEBLER: I guess my response to that would be
23 that the difficulty with the long-term contracts is that they
24 are -- have been secured largely in blocks, large blocks, multi-
25 hour blocks, on-peak and off-peak blocks, and typically don't
26 follow the load shape of the loads.

27 And if that's the case, then, say, in the
28 off-peak period, it's possible to have instances where you've
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01 got significantly more energy scheduled in the forward market
02 than you do load. In that instance, resources have to be dec'ed
03 to accommodate that energy.

04 And it's the cost implications of that which
05 factors into it.

06 SENATOR SHER: But under the system that was put
07 in place under Assembly Bill 1 in the Extraordinary Session,
08 they've contracted for that, and they may have contracted for
09 more than they need, but they're entitled to recover the cost of
10 that and what they're obligated to pay.

11 So, there's no incentive, then, to kind of bend
12 the ISO situation to cover that power, because DWR is already
13 protected with respect to that power.

14 MR. HAYES: Mr. Chairman, if I may.

15 I think we share some of the same questions that
16 are being outlined here.

17 We do not understand why the ISO and the DWR
18 would undertake a policy that is in direct contrast to their
19 tariff and the Federal Power Act. We are not clear what exactly
20 that is accomplishing.

21 SENATOR SHER: Mr. Chairman, in describing the
22 process in these out-of-market purchases, the way you described
23 it and the witnesses responded, it looked as if DWR was provided
24 this information that the other participants didn't have. And
25 then, on the basis of that, went out then and entered into
26 out-of-market transactions for power.

27 That would suggest to me that it's got nothing to
28 do with the bilateral contracts. It's additional power they're

0046 buying based on this confidential information.

01 Then the second part of that was, I understood
02 you to say that then ISO scheduled that, and I assumed at the
03 price that DWR obligated itself to pay for it. Scheduled it at
04 that price so that it would be a wash for them; is that right?

05 MR. KEBLER: I believe that's the case.

06 MR. DRIVON: Can I help out just a moment?

07 CERS is not only a buyer of OOM energy; they're
08 also a seller. In other words, CERS sells out-of-market as well
09 as buying out-of-market.

10 SENATOR SHER: But it's not power they generate.
11 It's power that they've purchased.

12 MR. DRIVON: Well, but they -- in other words,
13 they sell power to some of the same people they buy power from.

14 SENATOR SHER: I understand that, but it's not
15 power that CERS generates.

16 MR. DRIVON: No, it's power that they have
17 available from some other source.

18 SENATOR SHER: That they've purchased.

19 MR. DRIVON: They've purchased in one way or the
20 other, and now they're selling. So, they're buying and selling,
21 and we don't know which electrons are which.

22 SENATOR SHER: I understand that.

23 I'm just trying to figure out what are the
24 advantages. I can see your disadvantage, but I'm trying to see
25 what are the advantages to DWR in trying to relate that to these
26 contracts they've entered into?

27 One other question. If they do so, if this

0047 happens as described, and the ISO schedules that power, and it's
01 an over supply so that the dec mechanism is triggered, does DWR
02 have to pay something to underwrite the cost of dec? They're
03 the seller of the over supply in the market, and I understood
04 from the earlier testimony that where there's an over supply,
05 then the seller has to bear some of that dec.

06 So DWR has to pay that?

07 MR. HAYES: It is possible that DWR or CERS, and
08 further, the consumers of California would be responsible for

10 those charges, yes.

11 SENATOR SHER: That's what compensates these
12 other people who had that power available, and where you had to
13 decrease.

14 Okay, the final question. It's kind of a
15 universal question.

16 The ISO is now making the market. It's the only
17 mechanism in California for making the market now, since the PX
18 is no longer with us; is that right?

19 MR. HAYES: The ISO is the only functioning
20 clearing market for real-time energy.

21 SENATOR SHER: And I've heard testimony that it
22 would be better if there were somebody else doing it.

23 Would that be the case in your opinion, it would
24 be better if the ISO was not the clearing market, even if it
25 weren't furnishing this confidential information, as you allege?

26 MR. HAYES: I think in the best interests of
27 California's energy markets that the ISO ought to continue to
28 operate real-time imbalance energy markets in compliance with

0048 its tariff, applicable laws and regulations.

01 SENATOR SHER: And that's better than having some
02 independent market, like, you know, the New York Stock Exchange
03 or the Power Market that operates in my district that sells --
04 has been for a long time selling -- making a market in green
05 power.

06 MR. HAYES: To the extent that the ISO is, in
07 fact, the Independent System Operator, I think that would be --

08 SENATOR SHER: So you think it's a good thing
09 that the Independent System Operator, which has these functions
10 and responsibilities, also operates the market if it does it in
11 accordance with the rules. You think that's not a bad thing;
12 that's a good thing, in your opinion?

13 MR. HAYES: I believe that is the case, yes.

14 MR. KEBLER: I would agree with that. In the
15 real-time market, the ISO is responsible for managing the loads
16 and resources, and it's the logical entity to operate the
17 market.

18 And the issue is independence, and if it does
19 that independently and allows all market participants to buy and
20 sell freely in that real-time market, then we'll get efficient
21 outcomes and good decisions for consumers.

22 SENATOR SHER: But again, coming back to my first
23 question, Mr. Chairman, with respect to these contracts that
24 have been entered into the by the state, if all of that is
25 scheduled ahead and is built into the ISO scheduling, then what
26 we're really talking about here is truly the net short that's
27 not covered by these contracts, as to which the DWR is entitled

0049 to get its revenue requirements under state law. That's got to
01 come out of rates first, at least that was our intent. It may
02 not be your interpretation, but it's our intent was that the
03 state would be protected first for whatever its obligation was
04 under these contracts.

05 If that were true, and if information was
06 provided by the ISO ahead of time, that would be built in to
07 their scheduling, then what we're really talking about is this
08 real-time net short, where it's not covered by these contracts
09 or the retained generation of the IOUs; is that right?

10 MR. KEBLER: I guess my reaction to that would
11 be, and I'm not sure exactly how to break the question down, but
12 Senator, let me just respond this way.

13 To the extent that schedules don't match loads,
14 that necessitates reliance on the real-time market. And to the

16 extent that there are larger volumes that have to be transacted
 17 in the real-time market, either decs or incs, that's a less
 18 efficient way to operate the system.

19 The ideal situation is to match loads and
 20 resources as closely as possible in the day-ahead market, refine
 21 that as we move forward into the hour-ahead market, and then use
 22 the real-time market to just manage a relatively small
 23 differential that exists due to weather, and forecast error, and
 24 those sorts of things. That's the optimal way to run it.

25 And if we have situations that result in
 26 significant over-scheduling or under-scheduling, and greater
 27 reliance on transactions in the real-time market, that's a less
 28 efficient way to operate the system.

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01 SENATOR SHER: Obviously, I think I've
 02 demonstrated I'm no expert in this area. But I'm interested,
 03 and all my colleagues are interested in having all of the
 04 contractual obligations, which we authorized our state agency to
 05 enter into, scheduled way ahead of time so those are in the mix
 06 and are going to be recoverable through the revenue requirements
 07 that the Department has engaged in.

08 So, I'm trying to find out what the fight is
 09 about here. And what part of what's left, apparently, is what
 10 the fight is about, after you do that.

11 And I would hope everybody would agree that
 12 whatever your view about these contracts might be, whether they
 13 were advisable or not -- my understanding is that Reliant and
 14 Mirant may be sellers under some of those contracts -- that the
 15 understanding, the blueprint that we developed through
 16 legislation was that at a time when we were in crisis here, that
 17 those kinds of contracts should be entered into. Of course, we
 18 wanted them to be as cost effective as possible, but however it
 19 turned out, that it was never understood that those costs, you
 20 know, should not be recovered by the state agency that incurred
 21 the obligation.

22 MR. HAYES: Yes, Senator. And I think in
 23 response to that, your characterization of the nature of the
 24 complaint is correct, in that what we are attempting to deal
 25 with and accomplish deals only with the real-time imbalance
 26 energy markets.

27 The complaint seeks to get the ISO and all market
 28 participants to continue to conform with the tariff provisions,

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01 regulations, and applicable laws that govern this market, and
 02 that all other scheduling coordinators are in compliance with.

03 SENATOR SHER: The thing that I guess I'm having
 04 trouble understanding is why DWR/CERS would want to compete on
 05 that if it had nothing to do with their obligation under the
 06 bilateral contracts.

07 If they were covered on that, I mean, the whole
 08 theory here is to get the state as quickly as possible out of
 09 buying power if we can. I mean, we would think it a great thing
 10 if Southern California Edison, through the arrangements that had
 11 been made, tomorrow starts buying its immediate net short needs,
 12 and we wouldn't have to do it.

13 So, why would we want to be competing? Why does
 14 DWR want to compete with others to supply that power?

15 CHAIRMAN DUNN: Rhetorical question, I assume,
 16 Senator.

17 I just have a couple follow-up, then if there's
 18 any other questions from the folks sitting up here, we can turn
 19 to the next panel.

20 In the hypothetical that I stated before, that
 21 all of the long-term contracts for power is scheduled ahead, if

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we alter that hypothetical and assume that it's not all scheduled ahead, and I don't know if that's true or not, but let's assume it's not all scheduled ahead, there's no reason, at least from this outsider's perspective, that that power that is under a long-term contract could not be made available via the OOM purchases; is that correct, if that power was not scheduled ahead?

MR. HAYES: I am unaware of any reason, given the current procedures, that that would be the case.

CHAIRMAN DUNN: In other words, in my hypothetical, if we're trying to access higher priced long-term contract power in the OOM market, if that's the theory, it could be there if some of that long-term contracted power was not scheduled ahead.

MR. HAYES: That's my understanding of the procedure.

CHAIRMAN DUNN: Okay. Any disagreement?

MR. KEBLER: My only comment is that the representation has been from DWR that all the long-term contract power is scheduled in the forward market.

CHAIRMAN DUNN: Okay, and neither Reliant nor Mirant have made any independent assessment of that claim as of this point; is that correct?

MR. HAYES: Outside of conversations with ISO personnel and others, as we referenced earlier, we have no capability of pursuing that.

MR. KEBLER: The same, no capability to assess that.

CHAIRMAN DUNN: Okay. Just one other line of questioning.

Have you made any determination about where this sharing of confidentiality, and then bypassing less expensive BEEP energy, where did that originate from, and where did that come from? DWR? ISO? Do you know?

MR. HAYES: My understanding from conversations

with ISO personnel was that that originated with CERS or DWR. But I have know first-hand knowledge of that other than those conversations with ISO personnel.

CHAIRMAN DUNN: We can pose that to ISO, who is next.

Any different information?

MR. KEBLER: No, I don't have any response on that particular issue.

CHAIRMAN DUNN: Mr. Drivon, any follow-up questions?

MR. DRIVON: Yes, I do have a couple of questions.

You alluded a moment ago to conversations with ISO people concerning the potential relationship between these contracts and the OOM situation; is that correct?

MR. HAYES: Yes.

MR. DRIVON: And when you said that, did you have in mind any specific conversation or comment that you may have heard in that regard?

MR. HAYES: I have had a number of conversations with ISO personnel about this issue. In one conversation, in an effort to seek to understand why the prices were being charged that were being charged, it was to some degree explained to me that CERS was performing this out-of-market procurement procedure.

And in this specific conversation, it was relayed to me that there was some amount of question amongst ISO

28 personnel about where that power was coming from, that they were
0054 01 unaware of the source of that power, and that some people had
02 asked, been asking the question of whether or not that power was
03 coming from long-term contracts.

04 MR. DRIVON: Did you, as a part of that
05 conversation, relay that you had heard the CERS allege that
06 there was no such connection?

07 MR. HAYES: At the time that was -- CERS had not
08 represented that to the public at large. This was in the very
09 beginning of discussions about this issue, and we had had no
10 input from CERS one way or the other.

11 MR. DRIVON: Were any conversations relative to
12 the efficacy of allegations by CERS a part of any conversation
13 that you had more recently? Do you have any information in that
14 regard?

15 MR. BITTMAN: Mr. Drivon, Mr. Hayes has had
16 conversations with members of the ISO recently, but those, at
17 least part of those conversations, those discussions, are
18 covered by confidentiality because they were in conjunction with
19 a proceeding at the Federal Energy Regulatory Commission.

20 MR. DRIVON: The conversation that you're talking
21 about, I understand that there was a meeting conducted under the
22 auspices of the FERC. Is that perhaps what you've got reference
23 to, something that occurred on the day of that meeting?

24 MR. HAYES: Yes.

25 MR. DRIVON: Was the conversation that you had a
26 part of the meeting itself, or was it at sometime coincidental,
27 like at a break or over lunch, or whatever?

28 MR. HAYES: There were some remarks made upon
0055 01 return from a break that were not a part of the main forum of
02 discussion.

03 MR. DRIVON: Is it your feeling, Counsel, that
04 those comments would be within the purview of the privileged
05 part of the meeting?

06 MR. BITTMAN: No.

07 MR. DRIVON: Okay, then why don't you tell us
08 about those?

09 MR. HAYES: A remark was made to me by ISO
10 personnel returning from a break on that meeting that we were
11 not necessarily getting the whole truth.

12 But I don't think I can really speak to what that
13 was related to, as it's under the auspices of the
14 confidentiality of the FERC meeting.

15 But we were encouraged to seek additional
16 information and ask additional questions, as we were not
17 certainly seeming to get the entire truth.

18 MR. DRIVON: What you're telling me is that
19 something happened during the meeting, and then you talked about
20 it outside the meeting. And you don't want to tell me exactly
21 what the subject was, but you're telling me that the person from
22 the ISO told you that what was said in the meeting might not be
23 true.

24 MR. HAYES: That's correct.

25 MR. DRIVON: Actually, what were the words that
26 that person used?

27 MR. HAYES: I believe the words were, "You're
28 being lied to a little here. You need to ask more questions."

0056 01 MR. DRIVON: Who was the person who said that?

02 MR. HAYES: Randy Abernathy.

03 MR. DRIVON: He'll be along here in a little
04 while.

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05 CHAIRMAN DUNN: Senator Escutia.
06 SENATOR ESCUTIA: When did that meeting take
07 place?
08 MR. HAYES: I believe the dates were September
09 24th and 25th.
10 MR. DRIVON: The meeting was in Folsom, correct?
11 MR. HAYES: That's correct.
12 MR. DRIVON: We had some information about the
13 relationship between the BEEP and out-of-market, how it's
14 supposed to work. And if I understand it correctly, the
15 out-of-market is only to be used in the case of an emergency,
16 and usually then only for a relatively really little part of the
17 whole thing; is that correct?
18 MR. HAYES: Could you repeat the question?
19 MR. DRIVON: I'll give it a shot. Let me turn it
20 around.
21 I understand that first you have the forward
22 markets, the day-ahead market, et cetera. And then it moves
23 down the line until you get to the BEEP market. And then, after
24 the BEEP is taken -- and BEEP is just for imbalance. They made
25 a little miscalculation on what might be necessary or what was
26 bid, and that relatively small part of the energy, imbalance
27 energy, is to be supplied through the BEEP stack, according to
28 the architecture; right?

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01 MR. HAYES: That's correct.
02 MR. DRIVON: Then, in some instance, supposedly
03 rare instance, where there might be an emergency existing, you
04 might go out-of-market; correct?
05 MR. HAYES: That is correct.
06 MR. DRIVON: After BEEP stack is taken care of.
07 MR. HAYES: That's correct.
08 MR. DRIVON: So, the BEEP stack is kind of the
09 tip of the iceberg, and OOM is supposed to be the tip of the
10 tip.
11 MR. HAYES: That's correct, only utilized in
12 situations of emergency when resources are no longer available
13 through the BEEP.
14 MR. DRIVON: During the spring and summer of this
15 year, did either of you folks notice a change in the
16 relationship between the amount of energy and the price for that
17 energy that was paid in relation to the BEEP stack versus OOM
18 purchases?
19 MR. HAYES: Yes, as has been documented in the
20 Department of Market Analysis Reports.
21 MR. DRIVON: Because nobody's got those in front
22 of them, except I guess me, let me get a couple of the numbers
23 out so people get an idea of the relationships.
24 In January of this year, according to the report
25 that I have here from the ISO, and these are all hours reports,
26 the BEEP stack supplied 1270 gigawatts at \$287 dollars, and the
27 out-of-market purchases were 1342 gigawatts at 294, roughly
28 equivalent, both price and quantity; correct?

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01 That fits. I know you don't know the exact
02 numbers, but --
03 MR. HAYES: That fits with my understanding, yes.
04 MR. DRIVON: And in February, again, the amounts
05 purchased showed roughly equivalent prices, but now the OOM
06 purchases were exceeding significantly the BEEP purchases. Does
07 that fit your memory?
08 MR. HAYES: That's correct.
09 MR. DRIVON: Then if we go to March, the amount
10 of BEEP energy was 329 gigawatts, and out-of-market was 2259

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11 gigawatts. Is that the trend that you were seeing?
12 MR. HAYES: Yes, that is the trend that we had
13 noticed.
14 MR. DRIVON: If we go to April, at a price of
15 \$148, there were minus 22 gigawatts in the BEEP stack. In other
16 words, there'd been a net dec for the month; correct?
17 MR. HAYES: Correct.
18 MR. DRIVON: But out-of-market purchases, as
19 opposed to \$148 for the BEEP stack, out-of-market purchases were
20 \$372, and instead of a minus 22, there were 1864 gigawatts
21 out-of-market. Is that the trend you saw?
22 MR. HAYES: That is the trend, yes.
23 MR. DRIVON: So now the tip of the tip is turning
24 into the iceberg; right?
25 MR. HAYES: Yes.
26 MR. DRIVON: And following that, in the month of
27 May, for instance, \$103 a megawatt hour for 43 gigawatts in the
28 BEEP stack, \$296 for 1837 gigawatts in the OOM market.

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01 Did you see this kind of trend continue in terms
02 of the relationship between those markets, quantity and
03 price?
04 MR. HAYES: Yes, the trend continued, I believe,
05 through approximately August. One month in particular, I don't
06 recall the exact numbers, but I know that June, for instance,
07 had approximately 10 times the volume in out-of-market purchases
08 over BEEP purchases.
09 MR. DRIVON: June seems to be the one I don't
10 have so I can't give you exact numbers.
11 By August or maybe by September it was starting
12 to normalize a little bit?
13 MR. HAYES: I believe that's correct, but I don't
14 recall the exact numbers for those months.
15 MR. DRIVON: So, from about even, it went to as
16 much as 10-1, OOM over BEEP; correct?
17 MR. HAYES: Correct.
18 MR. DRIVON: And price, about 10-1 also at the
19 peak.
20 MR. HAYES: I'm not sure about the ratio to
21 price, but significantly higher price for the out-of-market.
22 MR. DRIVON: Thank you.
23 CHAIRMAN DUNN: Ms. Formanek, you have something
24 you want to offer here?
25 MS. FORMANEK: Thank you, Senator.
26 I wanted to make clear before you excuse these
27 witnesses that the ISO would have absolutely no objection to the
28 witness from Mirant testifying about the rest of the

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01 conversation.
02 There was a FERC request for confidentiality, but
03 the ISO is not asserting that. So, if you'd like to, go ahead.
04 CHAIRMAN DUNN: Thank you, Ms. Formanek.
05 Let me clarify for everyone, what we're dealing
06 with here is a meeting that was held in Folsom on September 24th
07 and 25th, I believe, of this year to address many of the
08 concerns that were ultimately embraced within the FERC filing by
09 Mirant and Reliant.
10 I did have a conversation with Mr. Robert Pease,
11 who is one of the lead litigation lawyers for FERC in
12 Washington, D.C. I asked Mr. Pease about FERC's position
13 regarding information that was disclosed at that meeting.
14 I was told in that conversation this morning that
15 FERC takes the position that that meeting was not done pursuant
16 to any FERC order, nor did it produce any FERC order, and that

17 it isn't FERC's position that there is a demand for
18 confidentiality.
19 Rather, it was Mr. Pease's position that the
20 other participants in that meeting preferred to consider it a
21 settlement type conference, and therefore preferred not to
22 disclose any information.
23 He concluded our conversation by saying if any of
24 the participants wish to disclose the information, particularly
25 their own information as opposed to somebody else's information,
26 FERC had no objection to that.
27 I'm assuming, given Ms. Formanek's waiver of
28 their involvement in that as to this small slice of the
0061 conversation, I'm assuming, Counsel, we can go forward, or
01 what's the position of legal counsel for Mirant?
02 MR. BITTMAN: Actually, Mr. Chairman, I think a
03 portion of the conversation that was omitted was not a portion
04 made statement, that is, made by the ISO. It was a statement
05 made by the DWR. So, they would have to be the ones to
06 waive.
07 CHAIRMAN DUNN: Do we have legal counsel for DWR
08 here? I know we've got DWR here. We've got legal counsel. If
09 we can steal one of you for just a moment.
10 SENATOR ESCUTIA: I'm confused, Mr. Chairman. I
11 thought that mention was made that the person who told Rob that
12 you're not being told a complete story was Randy Abernathy.
13 Doesn't he work for ISO?
14 CHAIRMAN DUNN: Let me correct it and see if I'm
15 misstating anything, Mr. Hayes.
16 Your conversation that was not part of the actual
17 meeting was with Mr. Abernathy from ISO?
18 MR. HAYES: That's correct.
19 CHAIRMAN DUNN: But the information he was
20 referring to related to information DWR was providing during the
21 course of the meetings.
22 MR. HAYES: That's correct.
23 CHAIRMAN DUNN: DWR, any position on this?
24 MR. GARRIS: My name is Pete Garris, DWR.
25 And DWR doesn't have an objection, but I was
26 under the impression that it was a FERC request for
27 confidentiality. I was at the meeting.
0062 CHAIRMAN DUNN: I understand, Mr. Garris, and I
01 appreciate that.
02 My only information on that is my conversation
03 with Mr. Pease in morning. We're not here to try to violate any
04 FERC order, but obviously if it can be discussed, we'd like to
05 see it discussed.
06 I guess, unfortunately, the burden rests on your
07 shoulders now.
08 MR. GARRIS: DWR has no objection.
09 CHAIRMAN DUNN: All right.
10 Mr. Drivon, did you want to follow-up?
11 Thank you, Mr. Garris. Thank you, Ms. Formanek.
12 MR. DRIVON: You indicated that you had discussed
13 a subject with Mr. Abernathy, the substance of which had been a
14 part of the meeting. And that in response to that, you were
15 told, I think your answer was, "Maybe you're being lied to a
16 little bit."
17 Is that what the response was?
18 MR. HAYES: Yes, that is correct. Farther to
19 that, "You should ask more questions."
20 MR. DRIVON: And what was in substance that he
21 told you you were not being told the truth about?
22

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MR. HAYES: DWR/CERS had been explaining to the market participants in the conference the nature by which -- the procedure which they had undertaken was being implemented, and the nature by which the long-term contracts were scheduled and dispatched.

It was their representation in that explanation,

I believe it was Mr. Garris who stated that no long-term contracts were being utilized for OOM purchases.

MR. DRIVON: And your discussion with Mr. Abernathy was as to whether or not that was right?

MR. HAYES: The discussion with Mr. Abernathy was related to the overall context of issues as presented by CERS. He indicated, as I stated earlier, that maybe the entire truth was not being represented, that we needed to ask more questions.

I interpreted that as his ability to help us as a market participant seek clarification on what was taking place. The questions that he recommended that we ask, I believe, were of the nature of, he was encouraging us to ask CERS why a scheduling coordinator agreement had not been signed directly by CERS, and if CERS had received a bill for the power that they were delivering on behalf of the net short position of the IOUs.

MR. DRIVON: Did part of the conversation have to do with whether or not there was a connection between the long-term contracts and the OOM purchases?

MR. HAYES: Yes.

MR. DRIVON: Did you understand Mr. Abernathy's comment to you as indicating that perhaps that the whole truth was not being told on that issue, and you should ask more questions?

MR. HAYES: I think Mr. Abernathy was indicating that within the global context of the issues, the whole truth was not being told.

In way of context, it is very important that it

be clarified that questions would be answered and then re-answered in these conversations with conflicting answers. For instance, and Bob, please let me know if I am stepping on any confidentiality.

But questions would be asked of DWR as to whether or not the long-term contracts were being used as OOM. The answer would come back, no.

Questions would be asked that in DWR/CERS' assessment of how to purchase OOM power, if they had long-term contract power that was available more cheaply than they could purchase it from other parties under OOM, would they purchase that power that was more cheaply available through the long-term contracts? The answer that came back was yes.

When the question was posed, isn't that in conflict with the assertion that long-term contracts were never used for OOM, the answer was unclear.

MR. DRIVON: So, you got a yes, no, and unclear.

MR. HAYES: Yes.

CHAIRMAN DUNN: Let me just follow-up with one question, Mr. Hayes.

Did you follow-up with additional questions and get any clarification, as you sit here today, whether at that meeting or subsequently?

MR. STARBIRD: Zack Starbird, for the record. I'm not clear whether the DWR's waiver of confidentiality extends beyond the statement or clarification from --

CHAIRMAN DUNN: Fair point, Counsel.

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01 Pete, are you still wandering back there? Did
 02 you hear the point that Mr. Starbird just indicated?
 03 MR. GARRIS: Please continue.
 04 CHAIRMAN DUNN: Okay, I'll assume that we have
 05 DWR's authority to go forward.
 06 MR. STARBIRD: Thank you.
 07 CHAIRMAN DUNN: The question was, as I understand
 08 your description with Mr. Abernathy, basically he was suggesting
 09 you've got to ask more questions.
 10 My question is, did ask those questions, whether
 11 at that meeting or subsequent to that? And if you did, have you
 12 gotten any clarification that Mr. Abernathy was suggesting you
 13 were in need of?
 14 MR. HAYES: Yes, the questions were subsequently
 15 asked. No, the clarification was not gained.
 16 CHAIRMAN DUNN: And even as you sit here today,
 17 you don't have a clarification on it?
 18 MR. HAYES: I do not.
 19 CHAIRMAN DUNN: Thus, your testimony that as of
 20 yet, Mirant -- and I'm assuming the same applies to Reliant --
 21 is not certain whether the long-term contracts are part of the
 22 OOM purchases.
 23 MR. HAYES: That is correct, we are not certain.
 24 MR. KEBLER: I would just say, I didn't have any
 25 such conversation, so I don't want to be --
 26 CHAIRMAN DUNN: I understand, and nobody was
 27 suggesting that.
 28 I just meant, you don't have any information, as

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01 you sit here today, about whether the long-term contracts are
 02 benefitting under the OOM purchases?
 03 MR. KEBLER: No.
 04 CHAIRMAN DUNN: Senator Escutia, Senator Sher,
 05 any follow-up for this panel? Mr. Drivon?
 06 If I may ask, and obviously it applies to legal
 07 counsel as well, too, if Mr. Hayes and Mr. Kebler could hang
 08 around -- technical term -- while we go through the other panels
 09 because there may be some follow-up questions we wish to ask.
 10 We will take five minutes so our court reporter
 11 can take a breather, and rest her hands, and restock paper.
 12 [Thereupon a brief recess
 13 was taken.]
 14 CHAIRMAN DUNN: Let's do the same order, start
 15 with you, identify, then we'll figure out who needs to be sworn
 16 in.
 17 MR. ROBINSON: Good afternoon. My name Charles
 18 Robinson. I'm Vice President and General Counsel of the
 19 California Independent System Operator.
 20 MS. FORMANEK: Norma Formanek, Farella, Braun and
 21 Martel, outside counsel for the ISO.
 22 MR. ALAYWAN: My name is Ziad Alaywan. I'm
 23 Director of Market Operation. That's the day-ahead, hour-ahead,
 24 and the real time.
 25 MR. YOUNG: Douglas Young, Farella, Braun and
 26 Martel, outside counsel. Good afternoon.
 27 MR. DETMERS: Jim Detmers, Vice President of Grid
 28 Operations for the California Independent System Operator.

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01 MR. WINTER: Terry Winter, CEO of the ISO.
 02 MR. RUBY: Allen Ruby. I'm Mr. Winter's lawyer.
 03 MR. ABERNATHY: Randy Abernathy, Vice President
 04 of Market Services for the California ISO.
 05 CHAIRMAN DUNN: I think, if my memory serves me,

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06 Ziad, we'll be swearing you in, Jim, Terry, and Randy. I think
07 we've got it. Those four.

08 [Thereupon ZIAD ALAYWAN,
09 JIM DETMERS, TERRY WINTER,
10 and RANDY ABERNATHY swore
11 to tell the truth, the
12 whole truth, and nothing
13 but the truth.]

14 CHAIRMAN DUNN: We could do this in a variety of
15 different ways. I guess the first question is, does anybody
16 have any prepared introductory comments regarding what brings us
17 here today? Terry, I'll start with you since you're CEO.

18 MR. WINTER: I certainly didn't prepare anything,
19 Senator Dunn, but I guess I would like to make a couple of
20 comments to answer some of Senator Sher's questions, because I
21 think there was quite a bit of confusion around it.

22 The first thing is, he asked whether -- he asked
23 the generators whether the ISO should run the market. And
24 implicit in that question was a much broader thought of markets
25 than I think we define the market here today.

26 There is a day-ahead, hour-ahead market. There's
27 bilateral markets. There's, you know, long-term contracts.

28 All of those we have never taken a position that
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01 we're the market people to do that. So, that's where the NYNEX
02 or the New York Stock Exchange type of entity could certainly
03 fill the bill, and we're not opposed to that.

04 When you get to the real-time markets, now you
05 are in an area where we have to, for reliability reasons, be
06 very close to what is being provided. So, with that
07 clarification.

08 The second thing that I think people are missing
09 tremendously is when Senator Sher made the comment that all of
10 the generators schedule in their load, so why isn't everybody
11 indifferent?

12 SENATOR SHER: Not all. Department of Water
13 Resources.

14 Just to clarify, I suggested that the Department
15 of Water Resources, under the contracts that it's entered into,
16 schedules its loads.

17 MR. WINTER: Correct.

18 Now, the thing that people often miss is that
19 when they think somebody scheduled in the day-ahead, that person
20 is going to generate. Those schedules are nothing more than
21 financial commitments to provide energy. So, what can happen in
22 real time if, let's say that I'm Generator X, and I have a
23 contract for 100 megawatts, and I am being paid \$100 for that
24 hundred megawatts.

25 I may or may not generate, because if I look at
26 the real-time market, and I see that there's power out there for
27 \$20 in the real-time market, and in fact it costs me \$60 to
28 generate, I will go ahead and take the \$100 price that I'm

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01 guaranteed, and then buy \$20 power to supplement it.

02 So, you have to be real careful when you say just
03 because it's scheduled, it's going to be there.

04 SENATOR SHER: I think you misunderstood my
05 point.

06 Let's assume that the Department of Water
07 Resources, through its agency, in June contracts for certain
08 power to be delivered in September. And they're obligated to
09 pay for it at a certain price.

10 I understood from the dialogue here that they
11 would schedule that. They would advise you of that contract

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obligation, and they have this power under contract, and that they're going to furnish it, and you would schedule that in so you would know that that power's available on September 1st, when you're figuring what your need is as the situation develops.

MR. WINTER: Actually, it's scheduled in the day ahead. We have, you know, broad indications of what will come in, but in that day-ahead market, they schedule all of that energy.

SENATOR SHER: But you know about it long before that, don't you? If they have commitments, they don't tell you about that? They don't give that to you long ahead when they know that they have a contractual obligation to pay for that amount of power on September 1st under a contract they entered into in June, let's say?

MR. WINTER: We sometimes see the contracts, but not always, because again, that's not our market.

SENATOR SHER: So, it's up to DWR, on the day ahead of September 1st, on August 31st, to tell you that they have that.

MR. WINTER: That's correct. They then would schedule that in, and we would see that schedule. And it may be --

SENATOR SHER: If they schedule it in, then that's going to affect what you need to go out and get. But they're entitled to do that, and even if it's a higher price power, and the ratepayer's going to pay more than you could buy it for on that day, that power will be utilized.

MR. WINTER: It will be scheduled in. Whether it is utilized or not depends on whether the generator feels he can buy substitute power at a less price.

SENATOR SHER: The generator who's made the contract with DWR?

MR. WINTER: Correct.

MR. DETMERS: However, if I might clarify that. I'm Jim Detmers.

The contract that was actually made between the two parties, be that CERS or CDWR, and the supplier, that contract still exists. And that financial commitment still has to be honored.

SENATOR SHER: So, even if they don't generate because they could do it cheaper, the net effect of that is, the ratepayer's going to pay that price.

MR. WINTER: Yes.

MR. DRIVON: Can I ask a question?

Does it necessarily follow that if energy is scheduled into the market, it's necessarily picked up?

MR. WINTER: I guess I don't know what you mean by "picked up."

Jim?

MR. DETMERS: If I might, hopefully, clarify me if I don't answer that question directly.

The actual supply of the power, there is first the contract or the bilateral arrangement. Then there is the scheduling of that in the day-ahead process, hour-ahead process, into the ISO.

The actual production of that may or may not actually occur, depending on what the agreements are between the supplier and the buyer. And if there is no agreement for providing metering information, no agreements in place to provide validation of actual delivery of that, it may not have to be produced.

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18 There is the availability for suppliers to
19 actually use the imbalance energy market at the ISO in order to
20 adjust their generation and take advantage or disadvantage of
21 the ISO's real-time imbalance energy market.

22 However, the actual production of that is
23 dependent on the supplier and the buyer contract, the bilateral
24 arrangement made in advance. So, this would be, say, CERS and
25 the suppliers.

26 MR. DRIVON: So, if someone has contract energy,
27 energy that's subject to a long-term forward contract, does it
28 answer -- strike that.

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01 I guess it doesn't answer the question of whether
02 or not that energy was actually produced to just answer the
03 question as to whether or not it was scheduled.

04 MR. DETMERS: That is correct.

05 MR. DRIVON: In fact, even though it's scheduled,
06 it may be in the end be used in the imbalance market.

07 MR. DETMERS: Some of that definitely could be
08 used in the imbalance market. The supply could be made. It
09 could be actually over-produced as well by the supplier.

10 So, depending on the conditions and what actions
11 the suppliers take, you could actually see under-production of
12 those facilities for whatever reason.

13 MR. DRIVON: Even though it was scheduled?

14 MR. DETMERS: Even though it was scheduled,
15 yes.

16 MR. DRIVON: And depending not only on the
17 production by the supplier, but also what other agreements there
18 might be between the bilateral contracting parties?

19 MR. DETMERS: Yes, that is correct. That's
20 normal not only between CERS and these suppliers, it could be
21 between, or it could be the production of an investor-owned
22 utility generation or other resources being scheduled through
23 the grid.

24 MR. DRIVON: So, the bottom line is, if we asked
25 the question was this or that contract scheduled into the
26 day-ahead market, regardless of what the answer might be, that's
27 probably not the last question we should ask on that point?

28 MR. DETMERS: Depending on what you're looking

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01 for, yes.

02 MS. FORMANEK: I think, Jim, actually we were
03 going to have in sort of a general response to some of the
04 themes --

05 CHAIRMAN DUNN: That's where I was going, Norma.
06 I was going to get there before we start -- we usually can't
07 help ourselves up here. Don't worry about that.

08 Mr. Detmers, why don't we go to some general
09 comments from you, if you would, please.

10 MR. DETMERS: Certainly, thank you, Mr.
11 Chairman.

12 After listening to -- I do not have a prepared
13 presentation for you. I have only heard the allegations being
14 made by Mirant and by Reliant, as well as many other suppliers
15 as to what the activities are that the ISO undertakes in its
16 real-time markets.

17 I know that there are a lot of concerns regarding
18 those activities. These activities, again, are not the clearest
19 of things to understand in the whole context of what occurs in
20 markets for the energy markets that the ISO actually functions
21 with, as well as energy markets that occur well in advance of
22 the ISO's market.

23 I wanted to clarify just briefly to make sure

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24 that we set the right context here of what the ISO does. In
25 receiving information from all the different parties that the
26 ISO normally deals with, we do receive information from
27 completely different perspectives because of different
28 availability of information. Those different perspectives

0074 normally come from generators at one perspective; the loads
01 seeing things from their perspective; the general public as well
02 as the ISO seeing things in different perspective.

03 I hope that I am able to clearly identify and
04 identify what the questions are that you're asking, and be able
05 to identify clearly what the answers are. I'm really trying,
06 and all of us are really trying, hopefully, not to confuse
07 anyone. I just wanted to make that and to lay that groundwork
08 first.

09 SENATOR SHER: Sorry to interrupt. I know you
10 want to get on with it, but unfortunately I have to leave.

11 If you're prepared at this time to answer the
12 question that was raised out of the dialogue with the previous
13 panel, to wit, the allegation that the ISO furnished
14 confidential information to CERS in violation of the ISO's own
15 rules or protocols with respect to the BEEP mechanism.

16 I know you'll be answering that in the context of
17 the FERC proceeding, but before I leave, I'd be interested to
18 have you tell me what your response to that would be?

19 MR. DETMERS: Yes. This matter is being taken up
20 by FERC. The ISO has prepared a response and has delivered that
21 response to FERC regarding the complaints that were alleged
22 earlier.

23 The ISO does provide certain information to CERS
24 in its real-time market. And again, what I'm referring to only
25 is just that quantity of energy that the ISO either has to
26 dispatch to make up an imbalance energy in the markets, what's
27 actually scheduled first, and scheduled and delivered, versus

0075 what the actual load is on the system.

01 The ISO has been using the Department of Water
02 Resources to provide the credit-worthy backing of its activities
03 not only in the out-of-market activities that it has had to
04 undertake, and I'll explain why we've had to undertake that, but
05 it's also had to use CERS or the Department of Water Resources,
06 a credit-worthy backer, for its imbalance energy in BEEP as well
07 as the ancillary services that the ISO has to acquire for
08 reliability services, which are -- the energy component is
09 included in the BEEP dispatch as well.

10 The ISO, going back through the dates that were
11 mentioned from January through today, has had to undertake in
12 out-of-market activities. We have only been doing that with
13 the understanding and the orders from FERC that require us to
14 have a credit-worthy backer. CDWR is the only entity that has
15 stepped up for providing that credit-worthy backing into the
16 ISO's market and activities for the shortages of energy that we
17 are seeing.

18 SENATOR SHER: Credit worthy to me, in my line of
19 work, usually relates to the situation of a buyer.

20 In this BEEP thing, the generators who are
21 complaining are sellers of power. What is your interest in
22 their being credit-worthy? You're interested in their being
23 able to provide power that they undertake or say is available?

24 I'm confused about credit-worthy. Reliability of
25 the market and the supply that you have to have, I can see why
26 you're concerned about that, but credit-worthiness was a problem
27 that Southern California Edison had when it couldn't obtain
28

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01 power. Because it was not credit-worthy, nobody would sell to
02 them.

03 Mirant and Reliant, the previous witnesses, were
04 complaining about a situation not in which they were buyers, but
05 they were sellers.

06 MR. DETMERS: DWR has been both.

07 SENATOR SHER: But you say you need a
08 credit-worthy person, and that's why you went to DWR and did not
09 go to these other people who said they had power available for a
10 lower price.

11 What does the credit-worthiness of Mirant and
12 Reliant in the situation we've been discussing have to do with
13 the issue that's before us?

14 MR. DETMERS: When the ISO performs its function
15 of balancing, it has to procure energy. We are doing that on
16 behalf of the load that is there. That load is a load that is
17 not being served by Pacific Gas & Electric Company and Southern
18 California Edison, who are not credit-worthy.

19 There has been no other entity stepping up to be
20 able to provide that assurance for purchasing that power to
21 deliver to meet that load.

22 SENATOR SHER: But in the BEEP situation, as it's
23 been explained here today, Mirant and Reliant, and others like
24 them, are not buyers. They want to supply the power.

25 MR. ABERNATHY: Senator Sher, let me offer a
26 clarification. My name's Randy Abernathy.

27 Participants in the BEEP stack can end up, and
28 the market participants in general, can end up as both buyers
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01 and sellers simultaneously. Just like in any type of exchange
02 situation where you enter into a market, you may be selling, you
03 may be purchasing.

04 So, we have credit requirements that have been
05 imposed upon us by FERC that require all of the participants in
06 our market to be credit-worthy, such that when the ISO settles
07 its markets, it can be assured that there is cash behind the
08 transactions that have happened up to that point, they can
09 ultimately be settled between the different buyers and sellers.

10 SENATOR SHER: But the situation, Mr. Abernathy,
11 we're talking about today is a situation in which Mirant and
12 Reliant wanted to be sellers and had power. And they were told,
13 no, no we're not going to take your power because we're getting
14 it elsewhere.

15 With respect to those transactions about which
16 they're complaining, you lose me when you say that you didn't
17 buy from them because they weren't credit-worthy.

18 MR. WINTER: Let me try. Let me give you a
19 situation that occurs, and I think you'll understand.

20 We go to the BEEP stack and we identify that we
21 would like to purchase 50 megawatts from Generator X. We call
22 Generator X and say, "We'll buy your 50 megawatts."

23 The first question we get is, "Who is the credit-
24 worthy backer for my sale?"

25 SENATOR SHER: I see that. They're worried about
26 the credit-worthiness of Southern California Edison.

27 MR. WINTER: Exactly. And so, we then say,
28 "Well, our market is backed by Edison, PG&E, blah-blah-blah."
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01 And two of those who probably are the ones requiring this power
02 are not credit-worthy.

03 So, the only option we've got is to go to CERS
04 and say --

05 SENATOR SHER: Wait a minute.

06 When you tell them that, they say, okay, then we

07 won't sell to you?

08 MR. WINTER: Yes.

09 So then we go to CERS, and we --

10 SENATOR SHER: Every one of these transactions
11 where you went to CERS and obtained power at a higher price than
12 was available at the BEEP, or on the BEEP, what's the right
13 expression, you first had a conversation with those people
14 offering the power on the BEEP and said, "We want to buy your
15 power," and they declined to sell it because you didn't have a
16 credit-worthy person who would stand behind the purchase price?
17 Every one of those transactions, before you went to CERS.

18 MR. WINTER: Okay. I would say never -- I would
19 never say never. Never say always.

20 The other problem that occurs is that as we get
21 into real time, we are trying to anticipate what the demand is.

22 Now, if I look at my BEEP stack, and at 3:00
23 o'clock in the afternoon I see that I have 100 megawatts in the
24 BEEP stack, and I see that my load is under-scheduled by 2,000
25 megawatts, I may well go to CERS early and say, "We need
26 additional power. There isn't sufficient in the BEEP stack to
27 get it."

28 SENATOR SHER: Let's take the case we were
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01 talking about earlier with the earlier panel, and this was
02 reported in the media, apparently, where there was power
03 available at the BEEP for \$60 a megawatt hour. And ISO
04 purchased power from CERS for \$400 a megawatt hour.

05 Can you tell us, A, whether there was such a
06 situation?

07 And B, that you first went to the people through
08 the BEEP mechanism and asked them or told them, "We would like
09 to buy your power for \$60 a megawatt hour," and they asked you
10 this question you just put a few minutes ago, "Well, who's
11 buying the power, and are they credit-worthy?" And you couldn't
12 give them the answer they wanted, so they refused to sell to you
13 at \$60 a megawatt hour.

14 Is that what happened?

15 MR. DETMERS: For the particular case that you're
16 referring to, and what was occurring at that time, the ISO has a
17 very dynamic system that it's working with. It's balancing
18 forward, up, down, all over the place.

19 We have to, in these out-of-market arrangements
20 that we are actually performing, have to anticipate what is
21 expected for the next hour. We have to do that roughly in an
22 hour in advance of going into that, to be able to make sure that
23 we continue supplies into California.

24 Some of those decisions have to be -- some of the
25 decisions that get factored into that include the locational
26 needs for power, such as north of Path 15, such as balancing of
27 the system, such as the response of the generators in the BEEP
28 stack. And as we go through our forecast, before we get into

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01 that hour, the ISO has to go out and make other arrangements
02 because of not only the mentioned lack of response of generators
03 in the BEEP stack, but also the locational needs that we have.

04 As we dispatch that, that does not mean that the
05 other \$60 energy might have been in a location that could not
06 have produced. All of that has to be put into right framework.
07 Could not have been produced to be able to meet our needs for
08 that particular hour.

09 SENATOR SHER: With respect, you keep changing
10 your answer.

11 When I first asked you the question, it had
12 something to do with credit-worthiness. Now, there are all

13 these other factors.

14 I'm not saying that that isn't what happened, but
15 it makes it hard for us, with our limited knowledge base here,
16 to understand what's going on when the allegation is that there
17 is this BEEP. There is power offered there. There are fixed
18 prices offered there. And that instead of accessing that, you
19 go a supplier with higher priced power.

20 When you first responded to the question of why,
21 you tell me it has something to do with credit-worthiness.

22 I'm confused totally, Mr. Chairman. On that note
23 I have to leave. Maybe you can unravel it.

24 CHAIRMAN DUNN: I think Ms. Formanek wants to add
25 something.

26 MS. FORMANEK: I'm wondering, would it be
27 terribly inappropriate if I, as sort of a non-operational person
28 tried, to interject here? I understand the confusion, I think,

0081 and it's the market structure.

02 The ISO is not the ultimate buyer. The ultimate
03 buyer, the person who needs the energy, for example, is Edison.
04 So, Edison ultimately pays the money. But Edison can't pay the
05 money. Edison is not credit-worthy.

06 SENATOR SHER: We're familiar with that.

07 MS. FORMANEK: Right, you're familiar with that.

08 FERC said to the ISO in a series of orders, "You
09 may not dispatch power from the BEEP stack or anywhere else
10 unless you know you have a credit-worthy backer for that power."

11 Therefore, the only place that the ISO can go for
12 the credit-worthy buyer to pay for the power to serve Edison is
13 to CDWR.

14 SENATOR SHER: Now, take the situation we had not
15 so long ago, where PG&E was not credit-worthy, where Edison was
16 not credit-worthy, where San Diego Gas and Electric was not
17 credit-worthy.

18 Under that FERC order, that eliminates the BEEP,
19 doesn't it? Because who are the other buyers?

20 MS. FORMANEK: No, it does not eliminate the
21 BEEP. It requires that the ISO get permission from CERS before
22 it dispatches energy from the BEEP. CERS has to agree that it's
23 going to pay before ISO can dispatch.

24 Did that help?

25 SENATOR SHER: In other words, you're saying that
26 the state has to step in on this short and assume the full
27 liability for that power being acquired through the BEEP
28 mechanism from Reliant or Mirant.

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01 MS. FORMANEK: That is exactly what FERC
02 directed.

03 SENATOR SHER: Then I'll rephrase my question.

04 In all these cases where you bought the more
05 expensive power, did you ask DWR/CERS whether they would stand
06 behind the \$60 power instead of charging \$400 a megawatt?

07 CHAIRMAN DUNN: In other words, if I could
08 rephrase the same question, with your permission, Senator Sher,
09 is, why doesn't DWR be the backer to the BEEP stack?

10 MR. DETMERS: DWR is the backer to the BEEP stack
11 up to a certain level.

12 The information that we're providing, the other
13 allegation that's being presented here, is that we're providing
14 information regarding that BEEP stack, not the actual bids, but
15 aggregated amounts of the megawatts. And general prices for
16 that is being provided to CERS. And so, CERS does have that
17 information. CERS is backing, for instance, the \$400 a
18 megawatt, and also is aware of the \$60 a megawatt.

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19 SENATOR SHER: All I'm asking them to do is back
20 the \$60 and save the ratepayers some money.

21 CHAIRMAN DUNN: And therein lies the question.
22 Why doesn't that happen?

23 MR. DETMERS: Again, DWR needs to explain a lot
24 of its processes of how it's making its arrangements, not only
25 in as far as determination of the real-time backing and what
26 it's doing in their out-of-market procurement when we request
27 that out-of-market.

28 The out-of-market arrangement is actually the
0083 out-of-market order to CDWR from the ISO. Beyond that point,

01 it's a bilateral arrangement that CERS has with some supplier.
02 Those are all outside of the ISO.

03 CHAIRMAN DUNN: Let me interrupt.
04 If I heard you correctly, what you said is, you
05 don't know why DWR isn't backing up the \$60 BEEP stack energy?

06 MR. DETMERS: CERS today is backing up to
07 approximately \$91 per megawatt. That has fluctuated, depending
08 on decisions being made at the Department of Water Resources.
09 That is on the incremental side.

10 The decremental side stops at zero.
11 So, those decisions are being made as far as what
12 is being backed by CERS.

13 CHAIRMAN DUNN: But beyond that, you don't know
14 why they ceased backing it; is that correct?

15 MR. DETMERS: They have been backing the
16 imbalance energy market.

17 CHAIRMAN DUNN: You said up to \$91?

18 MR. DETMERS: Up to \$91, yes.

19 CHAIRMAN DUNN: When we go beyond that, do you
20 know why CERS doesn't back it?

21 MR. DETMERS: I do not know.

22 CHAIRMAN DUNN: Any follow-up?

23 SENATOR SHER: I think it was sufficiently
24 confusing.

25 CHAIRMAN DUNN: What I want to do is just
26 establish some of the factual allegations and see if there's any
27 dispute from ISO so we can narrow the discussion.
28

0084 01 I'm assuming, Mr. Detmers, from your comments,
02 and Mr. Alaywan, and Mr. Abernathy, Mr. Winter, correct me if
03 you have any different perception.

04 You don't dispute the statement from the
05 Mirant/Reliant individuals that in fact ISO is sharing certain
06 confidential data with CERS.

07 MR. DETMERS: Yes, ISO does provide certain
08 information to CERS. It's not necessarily the specific
09 confidential information as called for in the tariff, Section
10 11, that is required to be retained as confidential.

11 CHAIRMAN DUNN: Will you agree with their general
12 description? That is, that the information that is provided is
13 information relating to the net short, information relating to,
14 at least on the aggregate, the price of the bids in the BEEP
15 stack. I think that was it. At least primarily, those were the
16 two issues.

17 Would you agree with that?

18 MR. DETMERS: Not necessarily. I still have to
19 understand the exactness of those terms that they're using.

20 As far as the net short, what we are providing to
21 CERS is not the net short. What we are providing to CERS is a
22 request for out-of-market energy that is determined by our
23 operators on the operating floor for the coming hour to be in
24 the system.

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25 CHAIRMAN DUNN: You're not going to make an
26 out-of-market request to CERS that would provide more than the
27 needed power; correct?

28 MR. DETMERS: The forecasted power at that time,
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01 yes.

02 CHAIRMAN DUNN: I guess we're using different
03 terms, but I think we're identifying that same amount of power.
04 But you make an OOM request to CERS for that amount of power
05 that you think you will be short.

06 MR. DETMERS: Yes.

07 CHAIRMAN DUNN: What other information from your
08 perspective is shared with CERS by ISO?

09 MR. DETMERS: We have provided some forecast
10 information. Other information that is actually provided on the
11 ISO's osmosis, or their web site, on our web site, with
12 information that's provided to all scheduling coordinators.
13 That's also identified in there.

14 But I think what Mirant and Reliant are arriving
15 at is that amount that we're actually calling for out-of-market,
16 as well as the depth of the megawatts in the imbalance --

17 CHAIRMAN DUNN: I'm sorry, that was the other
18 information --

19 MR. DETMERS: That was the other information.

20 CHAIRMAN DUNN: -- that Mirant and Reliant said
21 was being shared.

22 MR. DETMERS: Yes.

23 CHAIRMAN DUNN: You basically agree with that.
24 Some refining of that, but you basically agree with that.

25 MR. DETMERS: That's correct.

26 CHAIRMAN DUNN: Where did that sharing of
27 information idea originate? Where did that come from? Did ISO
28 decide to share it with CERS? Did CERS request it from ISO?

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01 Where did that come from and when?

02 MR. DETMERS: On or around January 17th, when
03 CERS, under Executive Order, became the entity that was going to
04 be fulfilling the backing and the purchase of energy to meet our
05 demands in the real time, when they began to undertake those
06 activities, that out-of-the market quantity was something that
07 we had to initiate -- was something that we had to do in order
08 to maintain real-time operations at that time. That was the
09 beginning of the activities that CERS began to undertake at that
10 time.

11 It continues even as we speak today.

12 CHAIRMAN DUNN: Let me make sure I understand
13 that as lay person.

14 What I think you said is, ISO had to provide that
15 information?

16 MR. DETMERS: The ISO had to determine a source
17 of supply for the megawatts in real time.

18 CHAIRMAN DUNN: Basically that's your role;
19 right?

20 MR. DETMERS: That's our role.

21 CHAIRMAN DUNN: So, nothing changed there.

22 MR. DETMERS: No. What we did begin at that time
23 on January 17th, because of the circumstances that we were under
24 at that time, and suppliers not willing to do business directly
25 with the ISO, CERS, or the Department of Water Resources, was
26 the only entity that stepped up at that time. It was the state
27 that stepped up for that buying activity.

28 That is why we began requesting through this
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01 entity the arrangements to get that.

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CHAIRMAN DUNN: They were the only credit-worthy
backer.

MR. DETMERS: For those purchases, yes.

CHAIRMAN DUNN: Yes, fair limitation on the
question, for those purposes.

What about the sharing of the confidential data?
I think you narrowed it a bit, because some may be confidential;
some may not be.

But the sharing of the data we've talked about
commenced when, and of course, why?

MR. DETMERS: The information was not necessarily
requested by CERS. That was the initial information of the
out-of-market.

So, the request was actually coming from the ISO.

CHAIRMAN DUNN: I understand.

MR. DETMERS: We were providing that to them.

The additional information of the aggregated
amount in the BEEP stack, or the aggregated amount of megawatts
or depth of the BEEP stack, that was information that was
requested by CERS. I don't know who the entity was, or whether
that was Mr. Garris or others at the CDWR, but they had
requested that specifically.

CHAIRMAN DUNN: Mr. Alaywan, I think you have
some information on this.

MR. ALAYWAN: Yeah, I'd like to just continue
what Jim said.

Ziad Alaywan from the Cal ISO.

As part of the requirement that CDWR were going
to back the purchases from BEEP, I was requested from Pete
Garris to send him information in terms of the thickness of the
BEEP stack, how many megawatts in terms of in aggregate. So,
part of that backing of our purchases, we had to give some
information that we do not post or give to any other
participant. These are the two things that Jim Detmers has
mentioned.

In addition, I want to add, is that they also
made a requirement to give the amount of megawatts that is
required to balance the system ahead of the BEEP stack. Before
we can see the BEEP stack, which is 45 minutes before the
operating hour, the CDWR has indicated to us that they want to
know how much energy we need in real-time 60 minutes prior to
the start of the real time.

So, before I know what's in the BEEP stack, I had
to tell CERS how much imbalance energy requirement we have. And
that goes back to the question of \$400 or \$60, because the
decision was made to go and tell CERS of the amount of megawatts
that we need for the imbalance energy. CERS goes and
negotiates the price, which is -- I have no knowledge of during
real time. I see it after the fact. And then, we see the BEEP
stack, and sometimes we get -- we see prices in the BEEP stack
that are lower than what actually had been bought, and sometimes
the other way around.

CHAIRMAN DUNN: Mr. Alaywan, it's my
understanding at least some of this information -- and correct
me if you have different perception. We're not asking for legal

conclusions here. We've got lots of lawyers around -- that the
sharing of at least some of this confidential information may
violate some of the FERC tariffs, the ISO protocols, et cetera.

Is that your understanding?

MR. ALAYWAN: That's my understanding.

CHAIRMAN DUNN: Did you express that opinion to
Mr. Garris when he made this request to you?

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08 MR. ALAYWAN: Many times.
09 CHAIRMAN DUNN: What was his response?
10 MR. ALAYWAN: If you want me to back your
11 purchases, I need to know -- I have an obligation from AB 1X to
12 make sure that we are purchasing energy, and I'm really phrasing
13 the many talks we had on the subject, that CERS felt they had an
14 obligation to buy power at the least cost. And they believe
15 that going 60 minutes and line up that energy ahead of time will
16 give them a better price than wait to the BEEP stack to come in.
17 CHAIRMAN DUNN: Okay. Did Mr. Garris tell you
18 whose decision it was to make this request via CERS to ISO? Was
19 it his decision? Did he reference anybody else?
20 MR. ALAYWAN: I'm not aware of anybody else.
21 CHAIRMAN DUNN: And his only explanation as to
22 why was that due to the legislative requirements to secure the
23 least expensive power, he needed this information.
24 MR. ALAYWAN: That's correct.
25 CHAIRMAN DUNN: Any other reason expressed to
26 you?
27 MR. ALAYWAN: Not that I can recall right now,
28 no.
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01 CHAIRMAN DUNN: Mr. Drivon.
02 MR. DRIVON: Did he explain to you how he could
03 be sure he was getting the least cost power if he was making
04 arrangements to furnish this power before anybody knew what was
05 in the BEEP stack?
06 MR. ALAYWAN: We had many discussions on the
07 subject. We had many discussions of how can we -- how can we
08 guarantee least cost where we have two separate process in
09 buying the same megawatt for the same hour.
10 MR. DRIVON: And what did he say?
11 MR. ALAYWAN: He believe, as he told me many
12 times, that in this business, if you line up power -- the more
13 time you have to line up power, the better deal that he can
14 get. And, you know, closer you line up that power to real time,
15 the closer you get to actual real time, the more expensive
16 energy becomes.
17 MR. DRIVON: Did any part of these discussions
18 have to do with the situation where the BEEP stack power
19 amounted to much less than the OOM power, that the relationship
20 between those two seemed to be backwards?
21 MR. ALAYWAN: As you mentioned the numbers that
22 you see from the Department of Market Analysis at ISO, the
23 out-of-market purchases were higher in March, and May, and back
24 in the spring. And I believe it's around August is when they
25 both, you know, prices start merging together.
26 MR. DETMERS: If I might clarify something on
27 that, too.
28 You would have to also understand that placing
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01 the out-of-market energy, that demand, on the BEEP stack would
02 have resulted in a completely different price in the BEEP stack
03 at that time because of increased demand.
04 MR. DRIVON: But there's another question.
05 With respect to the BEEP stack, what is your
06 experience recently with respect to, for instance, Pacific
07 Northwest Energy being supplier, bidding into the BEEP stack.
08 They aren't doing it; are they?
09 MR. DETMERS: They are not providing bids into
10 the BEEP stack.
11 MR. DRIVON: What efforts has the ISO made, and
12 maybe this is a question for Mr. Winter, but what efforts has
13 the ISO made in order to try to entice those suppliers to

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14 utilize the BEEP stack rather than the out-of-market mechanism?

15 MR. DETMERS: The ISO has been working on steps
16 in trying to identify with those suppliers outside what needs to
17 be changed in the ISO markets. We're still in the process of
18 developing some mechanisms that could potentially be used to
19 bring those suppliers back into the market.

20 One of the main components and reasons that I've
21 heard directly from these suppliers of why they do not want to
22 do business directly in the ISO markets deals with
23 credit-worthiness, deals with the state of our financial
24 condition here in California. So, they do have a reluctance on
25 doing business through the ISO because of that.

26 MR. DRIVON: Well, the BEEP stack is a 10-minute
27 market; right?

28 MR. DETMERS: Yes.

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01 MR. DRIVON: Have you been told by a number of
02 suppliers that they're not going to participate in a 10-minute
03 market because of system or generator equipment situations?
04 They don't want to be in the 10-minute market.

05 MR. DETMERS: Suppliers on the interchange or the
06 ties do not want to be exposed to the 10-minute pricing that
07 actually occurs, yes; that is correct. That's what they've
08 identified to us.

09 MR. DRIVON: So, is there a reason why the
10 mechanism is either 10 minutes or out-of-market? Has
11 consideration been given to changing the 10-minute market to
12 something that would be more compatible with the needs of the
13 generators who are not now participating?

14 MR. DETMERS: We are still undertaking that.
15 We're still reviewing that.

16 MR. DRIVON: And how long have you been reviewing
17 that?

18 MR. DETMERS: Again, since this event all
19 undertook -- or all overtook us in January of this year, we were
20 for the most part in a critical crisis situation up until the
21 end of May. We have been since that time looking at what our
22 alternatives are, as well as working out all of the process and
23 procedure changes, as well as FERC orders that have been
24 requested or ordered of us. And we've been implementing a whole
25 series other processes.

26 It's only been within the last month or two that
27 we've actually started and had the capability of going back to
28 work on that.

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01 MR. ABERNATHY: If I could add a comment to that
02 as well.

03 I think one of the things that we have seen that
04 has stalled the ISO's current market is the lack of payment by
05 the credit-worthy backer. As cash has not exchanged hands
06 between the participants in that market and the buyer, that has
07 put a serious cramp on our ability to make any kind of
08 meaningful changes, because without cash flowing through the
09 market, people are unwilling to participate in it.

10 MR. DRIVON: So, I guess both of you fellows are
11 agreeing that there's a problem, for instance, specifically with
12 the 10-minute market; right?

13 MR. ABERNATHY: Yes.

14 MR. DRIVON: And you're saying, number one, you
15 haven't really had much time to work on that because you had
16 other problems. And then you're adding to that, Mr. Abernathy,
17 that anyhow it's tough to make changes in a market when the
18 market participants are not being paid timely for what they are
19 doing.

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20 MR. ABERNATHY: Or paid at all.
21 MR. DRIVON: Or paid at all for what they are
22 doing.

23 Well, what steps has ISO management taken to
24 address those issues?

25 Let me ask a more fundamental question, because
26 this whole thing starts in the day-ahead situation; isn't that
27 true? Is there a day-ahead market in wholesale electricity in
28 California today?

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01 MR. ABERNATHY: There are small pieces of bi --
02 well, there are bilateral markets. There are bilateral
03 transactions that are happening. That's one market.

04 There are still a couple of independent markets
05 that are trying to provide power but are not being terribly
06 successful.

07 MR. DRIVON: Let me ask you, am I quoting you
08 correctly from your deposition, Mr. Winter, when I asked you
09 that same question? Am I quoting you correctly when you said,
10 "Not really?"

11 MR. WINTER: Yes, I think that was correct. I
12 think that market has been tremendously reduced with the
13 disappearance of the Power Exchange. So, it's moved more to a
14 bilateral -- you know, they say bilateral market, but it's
15 really bilateral contracts that are being arranged.

16 MR. DRIVON: Now, the PX, as we all know, is no
17 longer managing the day-ahead market because they're having
18 trouble managing their bankruptcy.

19 MR. WINTER: That's correct.

20 MR. DRIVON: So, who's minding that market, to
21 the extent there is one?

22 MR. WINTER: Well, I would say the bilateral
23 contracts are going forward. Those few remaining parties that
24 are doing it are really making the arrangements and scheduling
25 the power through us.

26 MR. DRIVON: So, them fellas are watching each
27 other; is that what's going on?

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MR. WINTER: Well, two consenting contracting

01 parties are making a bilateral agreement, which they then
02 schedule through the ISO.

03 MR. DRIVON: How is it then that the best
04 interests of the public are protected in a situation in which
05 these consenting bilateral contractors are proceeding without
06 other direction?

07 MR. WINTER: Well, the party to that contract is
08 the load who is buying the energy. So, if they're happy with
09 the price, then I assume they're getting the best deal they feel
10 they can.

11 MR. DRIVON: So, we didn't need a PX to start
12 with.

13 MR. WINTER: Well, I think the PX did provide a
14 real service for bringing contracts together, but clearly they
15 tried to offer programs that were more bilateral in nature, and
16 people did or did not enter into them.

17 I think what the PX did give us was, in the first
18 two years, when we had sufficient supply, the prices were down
19 around \$30 a megawatt hour.

20 MR. DRIVON: Are you satisfied with the current
21 structure of the day-ahead market in California?

22 MR. WINTER: No. I think that the current market
23 ought to be expanded and an opportunity for outside entities to
24 come, be it an APX or a IMEX, or someone to establish a more
25 fluid forward market.

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26 MR. DRIVON: Have you established a responsible
27 manager at the ISO who is responsible for looking into the
28 restructuring of that day-ahead market?

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01 MR. WINTER: The day-ahead market is not our
02 responsibility.

03 But yes, we have looked at the whole market
04 design issue.

05 MR. DRIVON: And who is, at the ISO, which one of
06 your officers is in charge of doing that now?

07 MR. WINTER: The person who's in charge of
08 looking at the forward markets is a group consolidated
09 underneath Elena Schmidt, the Strategic Planning Vice President.

10 MR. DRIVON: So, she should be able to tell us
11 what recommendations the ISO is developing currently for
12 restructuring that market.

13 MR. WINTER: To the point the work is done, yes.

14 MR. DRIVON: How long has the work been going on?

15 MR. WINTER: The PX disappeared. The bilateral
16 markets began taking hold. I would say that it's been going on
17 for a month or two.

18 MR. DRIVON: The boss wants to ask some
19 questions.

20 CHAIRMAN DUNN: Can I interrupt you? I want to
21 make sure that, again, I started on the confidentiality, in that
22 that was being shared.

23 Mr. Detmers said something about the other part
24 of the equation here, which is okay.

25 ISO makes an out-of-market call to CERS. CERS
26 goes out and purchases.

27 MR. DETMERS: Yes.

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01 out-of-market call that ISO makes to CERS would only be for that
02 amount of energy that you believe the BEEP stack will not
03 service.

04 MR. DETMERS: The actual supply of megawatts from
05 the BEEP stack is what we're assessing. And as we forecast
06 that, we are including what our projections are of available
07 resources that would actually respond to those dispatch
08 instructions. That is assessed, and then a determination is
09 made of how much needs to be secured out-of-market pursuant to
10 the tariff.

11 CHAIRMAN DUNN: So that your assessment is not
12 just what's the difference between actual demand and what's
13 available to cover. We're dealing with the imbalance, of
14 course.

15 MR. DETMERS: That's correct.

16 CHAIRMAN DUNN: What's available in the BEEP
17 stack. It's more than that. It's an assessment of what's in
18 the BEEP stack as well.

19 MR. DETMERS: It is what is in the BEEP stack,
20 what our current interchange is at that particular hour, because
21 these bids are not coming through in the BEEP stack, what our
22 locational needs are. All of those things get factored into the
23 decision made by the generation dispatcher.

24 CHAIRMAN DUNN: One of the biggest determinations
25 on the BEEP stack is whether in fact that energy that's been bid
26 in will actually be delivered, in your view?

27 MR. DETMERS: That is correct. That's our
28 experience.

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01 CHAIRMAN DUNN: Who is making those
02 determinations?

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03 MR. DETMERS: Which determinations?

04 CHAIRMAN DUNN: When you're looking at what sort
05 of OOM call you'll make to CERS, who at ISO makes the
06 determination what may not be, in your opinion, reliable energy
07 in the BEEP stack?

08 MR. DETMERS: That's the determination of the
09 generation dispatcher responsible for balancing the system. The
10 one individual that does have that responsibility has to factor
11 that in.

12 CHAIRMAN DUNN: Can you give me the names of some
13 of those individuals who carry that responsibility?

14 MR. DETMERS: They're the generation dispatchers
15 that are out on the ISO's floor.

16 CHAIRMAN DUNN: Who are they?

17 MR. DETMERS: There's several. Paul Bluce, who's
18 out there presently.

19 You're catching me cold here. Ed Hildago, and
20 Paul Feely are several. There are actually two shifts out there
21 that are doing that.

22 CHAIRMAN DUNN: Is there some sort of protocol
23 that ISO has developed to determine the reliability of energy
24 that's in the BEEP stack?

25 MR. DETMERS: No, we only have our experience,
26 and what they're actually experiencing at any given time.

27 CHAIRMAN DUNN: So, through the description you
28 just made about their experience, a determination is made on

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01 what may be unreliable in the BEEP stack, plus what, even if you
02 used everything in the BEEP stack, what you still may be short.
03 And together, those two add up to the amount of OOM call you
04 make to CERS?

05 MR. DETMERS: To and including what CERS is
06 actually backing in that BEEP stack, yes.

07 CHAIRMAN DUNN: And then, CERS goes out and
08 purchases?

09 MR. DETMERS: At our request, yes.

10 CHAIRMAN DUNN: At your request. And then that
11 hour is made available that they purchase.

12 MR. DETMERS: Yes.

13 CHAIRMAN DUNN: You heard the Reliant and Mirant
14 folks say that less expensive power is, in their view, being
15 bypassed in the BEEP stack for more expensive out-of-market
16 energy.

17 Are there reasons other than your assessment --
18 "your" referring to ISO's -- assessment of the lack of
19 reliability that ISO would bypass less expensive power in the
20 BEEP stack for more expensive OOM power?

21 MR. DETMERS: Again, the ISO does not want to
22 bypass the BEEP stack. We would prefer having our management
23 solely in the BEEP stack.

24 However, the ISO in managing the greater portion
25 of the California grid has to maintain sufficient imports into
26 certain areas because of transmission constraints.

27 That import figure, as well as the available
28 energy in state, is being assessed hour-by-hour as well. All of

0100
01 those things are being factored in.

02 MR. DRIVON: I believe Mr. Alaywan said a few
03 minutes ago, for instance, with respect to this Mojave
04 situation, that because the information was given to CERS before
05 the BEEP stack information became available, that there were
06 situations in which the ball game was over before the BEEP stack
07 was exposed.

08 Isn't that what I just heard him say a few

09 minutes ago?
10 MR. DETMERS: Some of those transactions, a lot
11 of those transactions are occurring before the actual BEEP stack
12 for that given hour is actually seen at the ISO.
13 MR. DRIVON: Okay, but you don't ask CERS to make
14 an OOM purchase until you've had an opportunity to assess the
15 BEEP stack.
16 MR. DETMERS: The BEEP stack is running at a
17 relative level throughout the day as we have the experience by
18 the operators. So, we have an estimate of what we would expect
19 to see of available energy in that imbalance market, and whether
20 it meets our needs.
21 MR. DRIVON: I understand that.
22 But if you provide this information
23 preferentially to CERS because they made you do it, which is
24 what you told me in your deposition; right?
25 MR. DETMERS: Yes.
26 MR. DRIVON: And they procure energy immediately
27 before the OOM call is actually made, then when you make the OOM
28 call, it has to take into consideration what they've already
0101 provided in response to the first information; correct?
02 MR. DETMERS: I don't know what the first
03 information was you're referring to.
04 MR. DRIVON: Ninety minutes ahead of time, you
05 give them some information. Sometimes they go run out and buy
06 power and say, "Here's some power."
07 Is that what happened, Mr. Alaywan?
08 MR. ALAYWAN: I said 60 minutes prior to that.
09 MR. DRIVON: Okay, 60 minutes.
10 And then, after that, you look at the BEEP stack,
11 and you say, "Oops, need OOM " But you don't need as much OOM
12 if they've already provided some.
13 MR. DETMERS: No, the out-of-market call is being
14 made prior to seeing that BEEP stack today.
15 MR. DRIVON: How come you're doing that? Why
16 don't you wait until you see the BEEP stack before you make the
17 OOM call?
18 MR. DETMERS: That's a good question of CERS.
19 MR. DRIVON: Did CERS tell you they wanted you to
20 give them the information before you took a look at the BEEP
21 stack?
22 MR. DETMERS: That's my understanding.
23 MR. DRIVON: And did you tell them you thought
24 that was a bad idea?
25 MR. ALAYWAN: I think I would -- I just described
26 that they have requested, as part of their credit backing of the
27 BEEP stack, they have requested that we tell them 60 minutes,
28 which is before we see the BEEP stack. We [sic] have requested
0102 to tell them how much out-of-market energy we need.
02 And they needed this information so they can, in
03 their assessment, they can make a good deal 60 minutes prior to
04 the starting of the real-time market.
05 CHAIRMAN DUNN: Let me ask one question.
06 Being a lay person trying to understand, if I'm
07 following Mr. Drivon's questions, how do they determine how much
08 OOM energy is going to be purchased when you haven't seen it
09 BEEP stack yet?
10 MR. ALAYWAN: Because the amount of energy, the
11 required amount of energy that we need does not depend on what's
12 in the BEEP stack.
13 The BEEP stack gives you a supply picture.
14 CHAIRMAN DUNN: I understand, Mr. Alaywan. My

15 apologies for interrupting.

16 My understanding is that your determination,
17 ISO's determination, as far as how much energy they're going to
18 make in an OOM call to CERS is determined not only by your
19 assessment of what the shortage will be between the total BEEP
20 stack energy and the real demand, but it also depends upon your
21 assessment of the unreliability of power that is currently in
22 the BEEP stack.

23 So, how can you make an OOM call to them when you
24 haven't even seen the BEEP stack?

25 MR. DETMERS: That again is being done by the
26 generation dispatchers forecasting what they have been seeing as
27 available resources. They know exactly what the in-state
28 resources are actually running at, what the available spinning

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01 reserve is and operating reserve is that they have on the grid.
02 And they're making that determination based on that available
03 capacity. That's the same --

04 CHAIRMAN DUNN: In other words, I get that with
05 respect to the shortage as between total BEEP stack power and
06 the real demand.

07 But I'm confused, to say the least, that
08 basically you're telling us that when it comes to rejecting
09 power that may be in that BEEP stack, you're rejecting it even
10 before you've seen what's available in the BEEP stack.

11 Am I incorrect about that?

12 MR. DETMERS: We are factoring that into our
13 assumptions of what will respond out of that BEEP stack.

14 CHAIRMAN DUNN: Even though you haven't seen the
15 BEEP stack?

16 MR. DETMERS: Even though the dispatchers have
17 not seen that.

18 When we call on energy, and we make the
19 out-of-market determination of supply coming in on the ties,
20 that has to be done before the actual operating hour, before you
21 enter that operating hour.

22 Once you're in the operating hour, then there's
23 no opportunity for bringing in additional out-of-market energy.
24 You have to solely rely on the total available capacity of the
25 capacity generation internal to the ISO, and what that BEEP
26 energy or what the dispatch is, and the acceptance of dispatch
27 instructions by the generators.

28 So, as we start to dispatch that, we are

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01 dependent on that performance of the generators to make sure
02 that we can rely on that to make sure we can balance the system.

03 MR. DRIVON: Why an hour? I mean, in other
04 words, if the ISO says -- excuse me.

05 If CERS says, "Gee whiz, we need an
06 hour-and-a-half," why can't you just look at the BEEP stack an
07 hour-and-a-half ahead of time? I mean, if that 30 minutes is
08 really going to make a big difference -- if you can't get them
09 to shrink their time to be like everybody else, how come you
10 can't expand the time so everybody else can be like them?

11 MR. DETMERS: The time is expanded. Bids can
12 come into the imbalance energy market.

13 It closes 45 minutes before the operating hour.
14 That's when you know that the final bids coming in are what is
15 available in that imbalance energy market. So, 45 minutes
16 before the operating hour is the time that we would know what is
17 really available in the BEEP stack.

18 MR. DRIVON: I still don't understand why it is
19 that you can't make all of these times jive.

20 If CERS is right, that more lead time leads to

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21 cheaper prices, if that's correct, then it would seem to me that
22 if you could boost everybody out there a little bit farther, you
23 could force better prices from everybody.

24 MR. DETMERS: Certainly, and that opportunity
25 still exists today with all entities scheduling into the ISO's
26 market. If all of the entities, all the market participants,
27 were actually managing their hour-ahead schedules to meet the
28 hour-ahead forecast, the demands on the real-time would not be

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01 there. We would have a much better picture to operate with at
02 the ISO.

03 MR. DRIVON: But basically what's happened is, a
04 lot of the market participants have taken their ball and gone
05 home as far as the BEEP stack is concerned. They don't want to
06 play in that game.

07 MR. DETMERS: Generators internally don't have a
08 choice at this point in time. They must offer all of theirs,
09 external or not, providing any offers.

10 MR. DRIVON: And with respect to those external
11 ones, that's what we were talking about awhile ago when you said
12 you're working on it, but you haven't had enough time yet.

13 MR. DETMERS: Yes.

14 MR. ALAYWAN: If I might add something.
15 We have talked with CERS and other market
16 participants about changing that timeline so the BEEP stack is
17 60 minutes before the hour. So like you said, everything would
18 be on the same timeline. We have talked about that several
19 times.

20 I think talking with CERS, they bring up more
21 issues than just the timeline. If you was just to fix that,
22 that would be an easy fix in my mind. But they bring up other
23 issues having to do with the market design. So, if we would
24 have moved that timeline, the BEEP timeline, to 60 minutes
25 rather than the 45 minutes, in my view there would be other
26 issues that CERS will like to change, which has to do with the
27 way the market works today.

28 So, it's not just a simple moving that timeline
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01 to 60 minutes and everybody is happy with that. There is other
02 issues that surface.

03 MR. DRIVON: Is there some kind of working
04 document that has been prepared within the ISO that lays out
05 what these problems and issues are, what is being done to
06 address them, and what the alternatives are to a potential fix?
07 Is there such a document that's been done?

08 MR. ABERNATHY: There are actually multiple
09 documents that have addressed a series market issues that have
10 been identified.

11 As you guys have probably witnessed today, the
12 complex nature of this starts to put a pull on the resources of
13 the organization in terms of how much you fix in the short-term
14 versus how much you try to advance a longer term, more
15 comprehensive proposal. Trying to pull one piece of the
16 spaghetti out of the bowl on this has unintended consequences
17 that we have witnessed on multiple occasions.

18 So, we are concerned and reflective about changes
19 that we make prior to making them because of that experience.

20 Right now, in terms of those bigger design
21 issues, I think it's safe to say that the biggest concern that
22 we have is actually getting dollars back into the market and
23 moving so we have some stable basis upon which to build a new
24 structure.

25 MR. DRIVON: It reminds me a little bit of the
26 fellow that said, as soon as he got caught up, he'd get

27 organized.

CHAIRMAN DUNN: Let me give you some follow-up.

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01 I'm going to pose it to you, Mr. Detmers, I welcome
02 Mr. Alaywan's, Mr. Winter's, Mr. Abernathy's input.

03 You heard from the Reliant and Mirant witnesses
04 that issue of demanding some evidence supporting your claim of
05 unreliability in the BEEP stack. That you provided certain
06 data, that they responded to it. And if I recall correctly, at
07 least one of them indicated that subsequent to that, ISO agreed
08 that the data they provided originally did not establish the
09 unreliability of the BEEP stack that certain market participants
10 were seeking.

11 Do you have a similar recollection of this issue?
12 MR. ABERNATHY: The example that was provided in
13 the FERC session, which is the information that I believe the
14 folks from Reliant and Mirant are discussing, was a sample of a
15 single hour on a single day.

16 We do have additional data that supports the
17 conclusions that we were drawing in that presentation and can
18 give different examples.

19 CHAIRMAN DUNN: Let's take it one at a time.

20 Do you now agree, though, that the example shared
21 then subsequently did not prove the point?

22 MR. ABERNATHY: One of the examples provided was
23 incorrect because of incorrect telemetry data. However, there
24 were other multiple examples in there that did show the issue
25 that we were trying --

26 CHAIRMAN DUNN: Has the data that you're
27 referring to, Mr. Abernathy, that you believe proves the
28 unreliability point been provided to anybody, whether it's FERC

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01 or other market participants?

02 MR. ABERNATHY: It has been provided to FERC.

03 MR. DETMERS: We have been in steady
04 correspondence with FERC regarding the lack of response to our
05 dispatch instructions. In fact, this morning I was on a phone
06 call with FERC compliance, discussing lack of compliance with
07 the must waiver requirements -- must offer requirements.

08 Our Compliance Section has identified repeatedly
09 instances where generators were either not honoring their own
10 bids, in fact, declining acceptance of those bids, as well as a
11 number of them -- and this might not be one particular case; it
12 might be on an overall basis -- our Compliance Department has
13 identified numerous areas of nonresponse of dispatch to the
14 orders coming from the ISO.

15 CHAIRMAN DUNN: Has that information been shared
16 with other market participants, in particular Reliant and
17 Mirant, since they were here today?

18 MR. DETMERS: Those on example have been raised
19 between FERC and those individuals, yes.

20 CHAIRMAN DUNN: And you don't know the outcome on
21 this one as of yet?

22 MR. DETMERS: It's still an open case with FERC.

23 CHAIRMAN DUNN: Let me switch gears for just a
24 second.

25 MR. DRIVON: May I ask a follow-up on that.

26 Is the ISO prepared to say that Mirant and

27 Reliant are unreliable sources of BEEP power.

28 MR. DETMERS: I'm not saying that either.

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01 Reliant and Mirant do respond to certain instructions of the
02 ISO. I am not casting a declaration that both of them are
03 unreliable providers of imbalance energy. I'm not saying that.

04 We have not said that.

05 However, on certain occasions, Reliant, for
06 example, has not provided the response requested via our
07 dispatch instructions.

08 MR. DRIVON: But you talked a little while ago
09 about, you sort of forecast ahead based on experience what part
10 of the BEEP stack might be unreliable.

11 And if you're not prepared to say in general that
12 these sources are not reliable, then how can you factor
13 unreliability from them in that equation?

14 MR. DETMERS: What we do look at is, there is
15 approximately 25 percent, roughly, rule of thumb, that the
16 dispatchers are not seeing as actual responses to dispatch
17 instructions. So, from that, they are estimating that based on
18 needs, everything's in forecast, but they are looking at that.
19 And they're working with their experience at hand on a daily
20 basis and hourly basis.

21 MR. DRIVON: Are there other generators that you
22 do feel are generally unreliable in terms of their BEEP stack
23 commitments?

24 MR. DETMERS: Yes. There have been others that
25 are unreliable.

26 MR. DRIVON: No, no. My question was, are you
27 saying that there are other generators who in general are
28 unreliable suppliers of BEEP stack energy?

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01 MR. DETMERS: There are others, but again, that
02 condition changes depending on what is happening. We see a
03 completely different pattern of that occurring daily, weekly,
04 and monthly.

05 MR. DRIVON: So, the pattern keeps changing.

06 MR. DETMERS: That is correct.

07 MR. DRIVON: Then how can you forecast what that
08 changing pattern's going to be before you can see the BEEP
09 stack?

10 MR. DETMERS: That is just like trying to
11 forecast how much load gets scheduled in in the day-ahead or the
12 hour-ahead market. It's something that we've been having --
13 been challenged with since Day One of operating the ISO.

14 CHAIRMAN DUNN: I want to shift for a second on
15 to the issue of -- I don't know whether to express it as an
16 allegation, a concern, a suspicion, a question -- as to whether
17 the primary beneficiary of the OOM purchases based on OOM calls
18 of CERS is the power that is under the long-term contracts.

19 Mr. Abernathy, I'm sure you suspected that was
20 coming your way on this one since we had testimony earlier about
21 a conversation you may have had with Mr. Hayes regarding that
22 particular question.

23 Can you share your thoughts on the issue of
24 long-term contracted power being a beneficiary of the OOM
25 purchases?

26 MR. ABERNATHY: I think, and I don't want to put
27 words into Mr. Hayes' mouth, but the context of that discussion
28 was as CERS was doing a presentation and making comments with

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01 respect to how they were or were not using the long-term
02 power. And as Mr. Hayes has indicated, there was inconsistency
03 in CERS' response during that day on those different items.

04 The specific incident where I had suggested to
05 him to ask more questions was actually around an issue related
06 to forecasting, and CERS' comment that they had been
07 coordinating with the investor-owned utilities with respect to
08 how they were doing forecasting, and that they were updating it
09 on a regular basis.

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10 As I was sitting in the audience, watching that
11 meeting progress, a representative from PG&E, who was their
12 person responsible for load forecasting, was sitting in front of
13 me, and was discussing the fact that, no, in fact CERS had not
14 been coordinating with them on the load forecasts. So, it was
15 uncertain as to how they were matching up the load forecast as
16 it got closer to real-time, so that the use of the long-term
17 contracts versus the OOM purchases, versus the BEEP purchases
18 were being effectively coordinated.

19 So, I suggested to Mr. Hayes at that point that
20 it may be appropriate, based on what I had heard from the
21 audience, to ask some additional questions.

22 There were also comments made during the course
23 of that session that would have led people to believe that CERS
24 was representing themselves as a scheduling coordinator. In
25 fact, they had not signed a scheduling coordinator agreement and
26 were not working in the normal contractual relationship as were
27 some of the other market participants. So, that was a point I
28 thought that was important for the entire audience to understand

0112 and have clarity upon.

01 CHAIRMAN DUNN: I think you mentioned somewhere
02 in there that was a suggestion made that perhaps there was a
03 coordination between the long-term contracts and the OOM
04 purchases going on at CERS. Did I hear that correctly?

05 MR. ABERNATHY: Correct.

06 CHAIRMAN DUNN: Can you explain what you mean by
07 that?

08 MR. ABERNATHY: CERS was making a presentation
09 and representing how they were handling those. I would not
10 begin to expound on what they were stating at that point. Quite
11 honestly, it wasn't very clear.

12 CHAIRMAN DUNN: Do you have any knowledge as to
13 whether the long-term contracts are beneficiaries of the OOM
14 purchases?

15 MR. ABERNATHY: No, I do not.

16 CHAIRMAN DUNN: Do you know who would have an
17 answer to that?

18 MR. ABERNATHY: I would suggest CERS.

19 CHAIRMAN DUNN: Do you know anybody at ISO that
20 has been looking into that issue?

21 MR. ABERNATHY: No, I do not.

22 MR. DRIVON: The question of whether there may be
23 a connection, or maybe call it a coordination, between the
24 long-term contracts and the OOM situation somehow would be a
25 situation that well could affect the operation of the ISO; isn't
26 that correct?

27 MR. ABERNATHY: I suppose that it could, yes.

0113 01 MR. DRIVON: Because of the way energy is being
02 delivered, because of the way the BEEP stack might be affected,
03 because of the way the relationship between OOM and BEEP might
04 take place. All of those things could be affected by the
05 coordination, if there was such coordination.

06 MR. ABERNATHY: It is a very complex system, and
07 yes.

08 MR. DRIVON: All right. Then my question is, who
09 at the ISO is looking into that at the present time to determine
10 whether or not that situation exists and that effect is taking
11 place? Is there management at the ISO that's been put in place
12 with instruction to figure that out?

13 MR. ALAYWAN: I have personally looked into
14 this.

15 What is very difficult about this is, I see -- my

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16 discussion with CERS is that they have been scheduling all the
17 long-term contract in the day-ahead. Now, I have looked at the
18 day-ahead numbers. They schedule quite a bit of energy in the
19 day-ahead.

20 But the way this works is that they schedule
21 against a load that might or might not happen. So, I don't know
22 if all the numbers that I see in a day-ahead schedule are
23 actually represent all the long-term contract that CERS have
24 signed, because I don't have a copy of all the long-term
25 contracts, and I have sat down, or know anybody at the ISO has
26 sat down and matched all the contract they have signed to what
27 has been scheduled in day-ahead.

28 Now, you're absolutely right that that has an
0114 impact on the real-time operation. But so far, we have not been
01 able -- I have not been able to make sure that all these
02 long-term contract are being scheduled in the day-ahead.

03 CERS have indicated that they have been
04 scheduling all of them in the day-ahead.

05 MR. DRIVON: Well, you know a whole lot more
06 about this, and are in a whole lot better position to figure
07 this out than I am or we are.

08 Have you been able to satisfy yourself,
09 Mr. Alaywan, that there is no connection or coordination between
10 the long-term contracts and the way that the OOM market is being
11 managed? Have you been able to satisfy yourself on that?

12 MR. ALAYWAN: Absolutely not.

13 MR. DRIVON: Do you have copies of the long-term
14 contracts?

15 MR. ALAYWAN: I do not have copies of the
16 long-term contracts.

17 MR. DRIVON: Would you like copies of the
18 long-term contracts?

19 MR. DETMERS: The ISO has copies of those. We
20 paid \$75 or so to get those.

21 MR. DRIVON: I got them for free.

22 MR. DETMERS: What a deal.

23 CHAIRMAN DUNN: Let me ask one other question,
24 and this may be it for this panel, since we're getting late.
25 Actually two.

26 Mr. Detmers, I'll pose it to you, but I welcome
27 any of the witnesses to comment on it.

0115 In your opinion, is there anything in any of the
01 rules, regulations, protocols, tariffs, that govern ISO that
02 allows ISO to make a determination regarding unreliability of
03 power in the BEEP stack justifying bypassing such power,
04 assuming it to be less expensive than power actually purchased?

05 MR. DETMERS: Section 2351 at the ISO tariff does
06 have it specified that if the ISO is forecasting a deficiency on
07 the grid, in other words, a deficiency and unable to meet its
08 WSCC-NERC requirements, if we are forecasting that condition,
09 that condition may be imminent that we could have an emergency
10 condition, we have the ability of going out and making bilateral
11 arrangements. That is what we refer to as an out-of-market
12 call.

13 That is the tariff section. There's other
14 sections that discuss the actual settlement of the
15 arrangements.

16 But we do have that ability of going out and
17 making that, based on our determination, and our determination
18 as best as operators, to be able to satisfy the needs in real
19 time of maintaining the operating reserves as required by the
20 reliability councils.

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22 CHAIRMAN DUNN: But nothing specifically says you
23 can assess reliability of existing BEEP stack bids and determine
24 that, if you believe so, they are unreliable, therefore
25 bypassing them? Nothing specifically says that; is that
26 correct?

27 MR. DETMERS: Nothing specifically says that we
28 can do that. Nothing specifically says that we're prevented

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01 from doing that.

02 We have to make a determination in order to
03 balance this system, and our determinations of whether resources
04 are going to be available, whether they will respond, whether
05 there's water behind resources to make them available for any
06 given hours of operation or otherwise, or if the fuel supply on
07 the natural gas system is also in jeopardy, we will take
08 whatever action's necessary to make sure that we don't impact
09 the safety, health, and welfare of California.

10 CHAIRMAN DUNN: I think last question.

11 Has any determination been made by ISO who is the
12 primary beneficiary of the OOM purchases since January? Which
13 supplier, generator, has provided most of the energy that was
14 purchased in OOM since January?

15 MR. DETMERS: Again, the beneficiary is what I
16 would have to question. The entity that the ISO goes to in
17 order to make these arrangements is CERS. And we are making
18 those arrangements based on our needs.

19 As to what agreements or what arrangements they
20 make beyond that point, we do not have any kind of rules,
21 anything in place, that would dictate what has to be done with
22 that process beyond our request.

23 CHAIRMAN DUNN: But certainly ISO knows where the
24 power comes from.

25 MR. DETMERS: We do know where that's being
26 supplied from, yes.

27 CHAIRMAN DUNN: Who has supplied the most in the
28 OOM purchases since January?

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01 MR. DETMERS: We do have a list. I don't have it
02 going back to January. We can provide that certainly. We do
03 have someplace here --

04 CHAIRMAN DUNN: I'm not trying to throw a curve
05 ball here. I think the individual company that sits at the top
06 of the list, the second-place team isn't even close.

07 MR. DETMERS: Going back into the time period
08 from May, the top supplier here was Power X.

09 CHAIRMAN DUNN: Do you know of any month that
10 Power X wasn't the top supplier?

11 MR. DETMERS: I haven't gone through this, and
12 I'm looking very quickly.

13 There may have been conditions where Power X was
14 not the top supplier.

15 CHAIRMAN DUNN: But to the best of your
16 recollection, Power X has been one of the top suppliers since
17 January?

18 MR. DETMERS: Yes, they have been one of the top
19 suppliers.

20 For instance, here in July, they're not the top
21 supplier.

22 CHAIRMAN DUNN: All right.

23 Mr. Drivon.

24 MR. DRIVON: March through October, Power X,
25 1,329,619 megawatts. Next is 855,000 megawatts.

26 MR. DETMERS: I don't know if those numbers are
27 correct or not. Those would be in megawatt hours if they were

28 provided by the ISO.

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01 MR. DRIVON: I do have another question. In
02 terms of the spread of the decremental costs, is CERS picking up
03 its share? Is CDWR paying when necessary?

04 MR. DETMERS: There is a question regarding CERS
05 payment that is up on the table today. We have been ordered by
06 FERC to submit an invoice to CERS for that portion of the
07 markets that they're backing.

08 The actual settlement of that have would have to
09 go back to questions to our Settlement Department, but I believe
10 CERS in that role has not been settling for those transactions
11 or their component of the decremental energy.

12 MR. DRIVON: Actually, up until the other day
13 when the FERC made its order, they had told you not to send them
14 a bill. Is that basically right?

15 MR. DETMERS: That's -- I'm not aware that
16 they've told us to send a bill or not send a bill. I know we
17 were in discussions -- we had officers in discussions with their
18 staff and other executives at the DWR to come an arrangement of
19 what the process is for settlement of the bills, the ISO bills.

20 MR. DRIVON: Were they handling their part of the
21 dec obligation same way the rest of the market was?

22 MR. DETMERS: As far as settlement or as far as
23 -- they were providing at that time backing of the imbalance
24 energy market.

25 MR. DRIVON: Were they responding to their
26 responsibilities with respect to the dec situation in the same
27 way the rest of the market was?

28 MR. DETMERS: Right now, I would believe -- I

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01 don't know what CERS is going to actually pay on the invoices
02 that they're going to begin receiving, so it's a little bit
03 early to tell whether they're going to meet those obligations or
04 not.

05 MR. DRIVON: Have they been receiving invoices up
06 until recently?

07 MR. DETMERS: I don't believe so.

08 MR. ABERNATHY: They have been receiving on a
09 monthly basis a summarized amount of the exposure that was
10 anticipated to be backed by CERS according to the agreements and
11 letters that they had signed and demonstrated to us.

12 MR. DRIVON: You send the rest of the market
13 participants a bill, don't you?

14 MR. ABERNATHY: Yes.

15 MR. DRIVON: Do you send CERS a bill?

16 MR. ABERNATHY: We sent the primary obligore a
17 bill, which in this case was PG&E or Southern California Edison,
18 and then supplied additional information to CERS as to the
19 amounts of those so that they, as the financial backer, could
20 fulfill that role.

21 MR. DRIVON: But you didn't send CERS a bill?

22 MR. ABERNATHY: We did not send CERS a bill
23 directly.

24 MR. DRIVON: Is that in compliance with your
25 tariff?

26 MR. ABERNATHY: I'm not going to make a legal
27 conclusion on this, but I believe we have met the obligation of
28 the tariff by sending the primary obligore, in this case the two

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01 investor-owned utilities, invoices.

02 CHAIRMAN DUNN: I promise, last question. I'm
03 going to pose it to you, Mr. Alaywan.

04 You mentioned before in response to my questions

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05 that at least in your opinion, the request for the data that
06 we've talked about rather extensively was not in compliance with
07 the various tariffs and protocols that govern ISO's actions.

08 Were there any other requests by CERS that you
09 felt were in violation of any ISO protocols, tariffs, et cetera?

10 MR. ALAYWAN: There might be one, but I think it
11 goes back to -- we talked about out-of-market inc, so that is
12 same thing, the out-of-market dec, meaning that we would figure
13 out how much megawatt that we need to back off generation, and
14 we tell CERS. And they would in most instances, they'll be
15 going and trying to sell power to take off from the system.

16 To my knowledge, that's all we give CERS.

17 CHAIRMAN DUNN: Same question to Mr. Abernathy.
18 Are you aware of any request via CERS that you felt was in
19 violation of the applicable protocols or tariff?

20 MR. ABERNATHY: Other than those already
21 mentioned, no.

22 CHAIRMAN DUNN: Same question, Mr. Detmers and
23 Mr. Winter?

24 MR. DETMERS: Again, I just want to make sure
25 that we're clear, that the out-of-market requests that the ISO
26 is making, and we're doing that in advance of that BEEP energy
27 or when we're receiving that BEEP, solely because of the request
28 of CERS to have that at that time.

0121 We again have to go through our process and to
01 come up with the numbers that we are looking for, and that's our
02 process to determine what needs might be.

03 But those are the issues at question, and we're
04 going to have to find out exactly what FERC has to say about
05 those issues.

06 CHAIRMAN DUNN: Has any assessment been done by
07 ISO to compare the average BEEP stack price with the average OOM
08 price?

09 MR. DETMERS: Could you state that again?

10 CHAIRMAN DUNN: Yes. Has ISO done any assessment
11 that compares the average BEEP price to the average OOM price?

12 MR. DETMERS: It may have been done in the
13 Department of Market Analysis. Again, their reports actually
14 generate all of that information, and it's readily available.

15 CHAIRMAN DUNN: Mr. Alaywan, you seem to be
16 nodding that you may be aware.

17 MR. ALAYWAN: The ISO have made the calculation
18 by the Department of Market Analysis.

19 CHAIRMAN DUNN: Do you know what the conclusions
20 were?

21 MR. ALAYWAN: I have seen the number. The
22 conclusion is in a summarize. The conclusion, the average price
23 for OOM starting in January was higher than the BEEP. That went
24 through to about June and July. I believe somewhere around
25 August is where the two prices, two average prices have been
26 kind of converge, and now they are within -- I would say very
27 close out-of-market and the average -- the average out-of-market

0122 prices and the average BEEP prices since mid-August, I would
01 say, they have been fairly close.

02 CHAIRMAN DUNN: Why don't we do this. Hopefully,
03 and I know we're getting late, but I have a feeling our next
04 witness is not going to go quite as long.

05 Do you have a follow-up?

06 MR. DRIVON: I do.

07 I was provided or we were provided as marked
08 "2Sen/ISO-643" in the documents provided to us, a copy of a
09 confidential memorandum from someone named Eric Woychik. He's a
10

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former member of the board, I think, and someone who was involved with the energy issues in general; is that correct?

MR. ABERNATHY: Correct.

MR. DRIVON: It's to Mr. Mike Florio. As I understand it, he is an ISO Board of Governor; is that correct?

MR. DETMERS: Yes.

MR. DRIVON: And again, this document came from you folks. And I would like to get your comments with respect to the content or part of the content of this memo.

It says:

"Re: Impacts on Costs and
Reliability of DWR/CERS
Scheduling Practices."

Quote:

"Current DWR/CERS practices
cause very large additional costs
for purchases on behalf of UDC
customers and this also

compromises reliability. The
situation is worse than alarming,
it's a potential bombshell of
negative publicity waiting to go
off. Further, what does this
suggest for the Governor's plan to
have the state take a larger role
-- 'don't go there.' If the press,
Legislature, or FERC gets wind of
this, I think we are toast!!!"

Three exclamation points.

I don't know quite -- this wasn't sent to the ISO, but it was supplied by the ISO. And I wondered if the ISO had done anything to look into what Mr. Woychik was talking about here?

MR. RUBY: Does somebody want to ask whether anybody's seen it before?

I'm sorry, my name is Allen Ruby.

Excuse the interruption, Mr. Chairman. I withdraw my comment. I should continue to sit quietly here.

MR. DRIVON: No, it's a fair comment Mr. Ruby, except it was supplied to us by you folks, so I assume somebody saw it. I mean, that was just an assumption that I made.

CHAIRMAN DUNN: And let's pose the question to our four witnesses. Have any of you seen this memo before?

MR. DETMERS: I have not seen it.

MR. ALAYWAN: No.

MR. YOUNG: Doug Young.

I think the record should reflect that each of the witnesses has indicated that he has not seen this document.

MR. ABERNATHY: Doug, I want to clarify.

I'm not certain if I have seen it before or not. Eric has provided us a number of memorandum with his assessment and as critique of some of the practices of both the ISO and CERS. We have had an opportunity on multiple occasions to discuss those issues with him.

The Board put together a group called the Market Advisory Group, of which Mr. Woychik was one of the participants where a number of these kinds of issues were discussed.

So, I'm not certain if I've seen that particular version of this, but he has certainly raised issues on market structure before.

CHAIRMAN DUNN: Thank you, Mr. Abernathy.
Mr. Alaywan, did you want to add anything?

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17 MR. ALAYWAN: No, I'd just like to just confirm
18 what Mr. Abernathy is saying. I was also present at many
19 discussion with Mr. Woychik and Florio, and there were similar
20 discussion, verbal discussion, related to the inefficiency that
21 this is causing by having two different process in which we buy
22 energy and -- but I have not seen this specific memo. But there
23 were several verbal discussion regarding the inefficiency of
24 this process that we've been having since January, and it is
25 time to fix it, essentially.

26 CHAIRMAN DUNN: All right. I think we've reached
27 the end of this panel. If I can ask you guys to hold just a
28 little bit, I think, Pete, we'll go through you as quickly as

0125 possible, not as long as these past panels.

02 Evelyn needs five minutes, and then we'll do the
03 last panel.

04 Doug, did you want to say something?

05 MR. YOUNG: Yes, Mr. Chair, one thing.

06 On November 9th, I think you were kind enough to
07 indicate to us some questions that the Committee expected that
08 we might be asked today.

09 CHAIRMAN DUNN: Yes.

10 MR. YOUNG: We've covered a great number of those
11 today, although not exactly as posed, in fact, not all of them.

12 CHAIRMAN DUNN: Correct.

13 MR. YOUNG: I'm wondering if it would be helpful,
14 we would offer to do this if it would be helpful for the
15 Committee to submit answers to those questions.

16 CHAIRMAN DUNN: We would very much appreciate
17 that.

18 MR. YOUNG: Then we will undertake to do that.

19 CHAIRMAN DUNN: And you are right. We've covered
20 the vast majority of them, all in different contexts, but a
21 written response to those specific questions posed would be
22 greatly appreciated.

23 MR. YOUNG: We will do that.

24 [Thereupon a brief recess
25 was taken.]

26 CHAIRMAN DUNN: The hour is late and let's begin.
27 If we can have each of the individuals at the table identify
28 themselves, but I think, Pete, you're going to be the only one

0126 that we're going to be swearing in. Go ahead.

02 MS. CHIPPONERI: Good afternoon, Mr. Chairman.
03 Lucinda Chipponeri, Department of Water Resources.

04 MR. GARRIS: Good afternoon, Mr. Chairman. Pete
05 Garris, Department of Water Resources.

06 MS. PARK: Good afternoon. Jee Hi Park, Hawkins,
07 Delafield and Wood, outside counsel.

08 CHAIRMAN DUNN: While they're digging out their
09 cards, I want to clarify for anybody who is suspicious about how
10 each of these witnesses came to be today, every last one of them
11 was subpoenaed by the Committee.

12 Mirant and Reliant were both subpoenaed. They
13 chose the individual they wanted to testify under what we call a
14 subpoena for the person most knowledgeable.

15 The other witnesses, the ISO and now Mr. Garris,
16 each of the names of those individuals came to us through our
17 depositions and other inquiries about the allegations. So, we
18 made the determination to subpoena these witnesses, in case
19 anybody's wondering. I want to make sure everybody understands
20 how that came to be.

21 Bob, why don't you swear in Mr. Garris and we'll
22 get going.

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[Thereupon PETER GARRIS
swore to tell the truth,
the whole truth, and
nothing but the truth.]

CHAIRMAN DUNN: And we've got one other person
joining us at the table. If you'd just identify yourself.

MR. VANDERHOVEN: Robert Vanderhoven, staff
counsel.

CHAIRMAN DUNN: Mr. Garris, I know you've got a
prepared opening statement. We talked off the record. If you
could make some opening comments, I think you know, having
listened all afternoon, exactly what issues are of most interest
to the Committee. I ask you to zero right in on those.

MR. GARRIS: Mr. Chairman, thank you very much.
What I'd like to do is take the opportunity to
address this Committee and assert that the principle allegations
made by the two generators in their complaint, that the ISO is
providing preferential treatment to the California Energy
Resources Scheduling Division of the Department of Water
Resources are inaccurate and are false.

The generators' allegations are based on two
false premises. One is the assertion that CERS is a market
participant in the same way that generators are, or in the same
way that the California investor-owned utilities, the IOUs,
were.

The second false premise is the implied notion
that the California ISO's real-time market is a competitive
market available to multiple buyers.

It's critical for the Committee to understand why
these assertions are false, and even more important, to have an
accurate understanding of the role that CERS plays in the ISO's
real-time market.

About a year ago, two of California's largest
IOUs, Southern California Edison and Pacific Gas and Electric

Company, were sliding into insolvency because of the cost of
power procured through the California Power Exchange and by the
California ISO through its real-time markets. The cost of that
energy was more than the IOUs were allowed to recover from their
customers because of the rate freeze established under AB 1890.

CERS was brought into the role of the provider of
last resort for the retail end-use customers of the IOUs in
January of this year because the IOUs were no longer regarded as
credit-worthy parties in the California Power Exchange or
California ISO markets. Due to the lack of a credit-worthy
buyer, generators were either refusing to sell electricity into
the California market, or doing so at prices that include a very
high risk premium.

CERS meets its obligation under AB 1X every day.
The state's three IOUs submit to CERS their forecast of expected
hourly net short energy needs on a day-ahead and a week-ahead
basis, and even more frequently than that.

CERS schedules long-term contracts it has entered
into on behalf of the IOUs against their forecasted net short
energy needs to come up with a residual net short requirement.
This residual net short position is covered by CERS making
purchases in the spot market, both on a day-ahead and hour-ahead
basis. The spot market is separate and distinct from the ISO's
real-time market and is not the subject of the generators'
complaint.

And let me start off by saying unequivocally that
CERS does not schedule its long-term contracts as OOM

And I'll be happy to answer any questions.

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01 MR. DRIVON: Does that mean, Mr. Garris, that
02 there is no connection or coordination between the long-term
03 contracts and the real-time market?

04 MR. GARRIS: If I understand the question
05 correctly, that's an accurate statement. The long-term
06 contracts are scheduled in the day-ahead and hour-ahead markets.
07 They're balanced energy markets that are operated by the
08 California ISO. At that particular point in time, the long-term
09 contracts can no longer be rescheduled in any of the ISO
10 markets.

11 MR. DRIVON: Can they then be scheduled
12 out-of-market?

13 MR. GARRIS: The long-term contracts conceivably
14 could be scheduled out-of-market, but they are not.

15 MR. DRIVON: Are there bilateral contracts that
16 are connected in any way with California energy in which CERS or
17 CDWR are parties that are not public?

18 MR. GARRIS: I don't believe there are any
19 long-term contracts that are not public. I believe all
20 long-term contracts are available to the general public as well
21 as anybody in this particular room.

22 MR. DRIVON: Has CERS/CDWR sold any of its
23 long-term positions to other market participants?

24 MR. GARRIS: Yes, we have.

25 MR. DRIVON: Have some of those sales been made,
26 for instance, to the Power X?

27 MR. GARRIS: Possibly. The sales -- long-term
28 contract sales could possibly be made to the Power X or other

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01 market participants. It would be dependent on the amount of
02 energy that was available, the need on the counter party, and
03 the surplus if any that CERS had.

04 MR. DRIVON: My information is, for instance,
05 that in June of 2001, over 25,000 megawatts of contract power
06 was sold by CERS directly to the Power X. Are you aware of
07 that?

08 MR. GARRIS: No, sir, I'm not. In fact, I'd like
09 to make a distinction between contract energy and real-time
10 transactions.

11 Contract energy is the energy that's scheduled in
12 a forward market. To the extent -- and I can get you the
13 numbers to verify it if there were 25,000 megawatt hours.

14 To the extent that we schedule on a forward
15 basis, that would be contract energy. If we made those sales in
16 real-time, the OOM transactions or OOM sales that you heard
17 discussed, that energy does not necessarily come from the
18 long-term contracts that CERS/DWR has.

19 MR. DRIVON: If CERS/CDWR was going to sell in
20 the out-of-market market, if that's the right way to say it, and
21 it wasn't part of their long-term contracts, where did they get
22 it?

23 MR. GARRIS: Okay, that's a fair question. I
24 think that's something that needs to be understood by the
25 Committee.

26 In real-time, out-of-market transactions and
27 sales in particular can be made for a number of reasons. It
28 could be for generators that are over-supplying or chasing price

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01 signals in an open market, if there is any price signal that
02 they like.

03 It could be due to infeasible schedules that are
04 submitted through the ISO market and are accepted because, as I
05 believe Terry Winter said earlier, they're solid financially.

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06 It could be due to congestion in a particular
07 zone, which creates an over supply in a zone.

08 It could be to insufficient regulation. That's
09 the ability of generators to move up and down inside the ISO's
10 system to manage the instantaneous changes in loads.

11 And it could be a load forecaster on the part of
12 the investor-owned utilities, or any other load-serving entity
13 within the grid.

14 All of these things can cause an over supply of
15 energy in any given interval.

16 MR. DRIVON: I don't know if that answered the
17 question of, if CERS/CDWR is going to be selling energy, and
18 it's is not coming from their long-term contracts, where are
19 they getting it?

20 MR. GARRIS: The energy is an over supply on the
21 grid, just like OOM purchases. The ISO instructs CERS as to the
22 quantity and locations of OOM sales that it is requesting CERS
23 to make.

24 MR. DRIVON: So, the ISO tells you either to make
25 purchases or sales?

26 MR. GARRIS: That's correct.

27 MR. DRIVON: And you do both?

28 MR. GARRIS: That's correct.

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01 MR. DRIVON: But in neither of those cases would
02 the contract energy be involved either directly or in
03 coordination with something else?

04 MR. GARRIS: That's also correct.

05 MR. DRIVON: Do you have contracts of any kind
06 with, for instance, the Power X with respect to their potential
07 supply of OOM energy if you call them?

08 MR. GARRIS: It's possible that under a long-term
09 exchange agreement with Power X that we could call on energy
10 from the Power X that could be provided in real-time, but the
11 only way we would call on that energy, and this is a very
12 important distinction, is if we were requested to do so by the
13 ISO. We do not routinely call on and schedule that energy
14 because of a need on the part of CERS.

15 MR. DRIVON: You called it a long-term power
16 what?

17 MR. GARRIS: Exchange.

18 What happens in the old world, and even in the
19 new world, in the de-regulated world as we're making this
20 transition, entities would agree to provide energy in one period
21 of time for a return of that energy in some other period of
22 time. Often at an exchange ratio or on a time basis.

23 As an example, California typically has its peak
24 loads in the summer. Power X and other Northwest utilities
25 typically have their peak loads in the winter. Many times
26 you'll enter into a seasonal exchange agreement, so energy
27 delivered in the summer of 2001 would be repaid in the fall and
28 winter of 2001-2002 to Northwest entities.

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01 We do have an exchange agreement in place with
02 the Power X folks.

03 MR. DRIVON: Is there a difference between a
04 long-term power exchange agreement and a long-term energy
05 contract?

06 MR. GARRIS: The distinction that I would make is
07 that a long-term power contract specifies the amount of power to
08 be delivered and the conditions under which it be delivered, and
09 there's an expectation that that energy would be delivered for
10 some period of time, price, quantity, and location.

11 The exchange agreement anticipates that energy

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12 will be needed, and possibly on an unforeseen basis, but it
13 would be rescheduled for repayment at a later time.

14 MR. DRIVON: So, you're talking more megawatt for
15 megawatt than you are price, term, location.

16 MR. GARRIS: Typically what happens is, you're
17 paying back megawatt for megawatt. Depending on the season and
18 the type of energy, the exchange may be one for one, or it may
19 be some other ratio, a multiple of one for one.

20 MR. DRIVON: And if, for instance, one of the
21 provisions of that long-term power exchange agreement were to
22 exchange forward power for shorter term power, there could be a
23 premium set forth in the agreement?

24 MR. GARRIS: Yes.

25 MR. DRIVON: Are the long-term power exchange
26 agreements that CERS has, have those been supplied to the
27 public?

28 MR. GARRIS: Yes, they have.

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01 If you don't have a copy, we can certainly supply
02 it.

03 MR. DRIVON: Copies are available of all such
04 long-term power exchange agreements?

05 MR. GARRIS: That's correct.

06 MR. DRIVON: Are there short-term power exchange
07 agreements?

08 MR. GARRIS: There are shorter term power
09 agreements that last for a period of 30 to 90 days. Those
10 typically don't have executed contracts but are verbal contracts
11 executed under a WSPP agreement. That's the Western Systems
12 Power Pool. It provides umbrella language for contracting
13 parties to be able to transact.

14 MR. DRIVON: Is there a record, note, or
15 memorandum of those that's kept?

16 MR. GARRIS: Yes, there is.

17 MR. DRIVON: Are those memorandum, notes, et
18 cetera, part of the public record?

19 MR. GARRIS: They're part of the public record, I
20 believe, through June 30th. I believe we're in the process of
21 making available additional information through the period of
22 August 31st.

23 MR. DRIVON: Would the long-term power exchange
24 agreement be utilized by CERS in such a way that some of the
25 long-term contract power would be used to satisfy the agreement?

26 MR. GARRIS: That's a possibility. That would be
27 a scheduling or a business decision we'd make at the time when
28 the power was due to be returned to somebody like Power X who

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01 had supplied it.

02 MR. DRIVON: But in that situation then, there
03 would be long-term contract power that was not scheduled into
04 the day-ahead market.

05 MR. GARRIS: If I understand the question
06 correctly, no. We would schedule the return energy on a forward
07 basis. Since we know that it's going to be returned, we'd know
08 the amount of energy, and the location it was required, and we
09 would schedule that on a forward basis.

10 MR. DRIVON: In ISO market?

11 MR. GARRIS: That's correct. So, as an example,
12 I'll elaborate.

13 If we were to return energy to Power X next week,
14 and knew the location and the quantity, we would set up a
15 schedule on a forward basis in the day-ahead market and supply
16 that energy through our long-term contracts in the day-ahead
17 market.

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18 MR. DRIVON: Even if the energy was to be
19 delivered, for instance, in the State of Washington?

20 MR. GARRIS: It could be delivered in the State
21 of Washington; that's correct.

22 MR. DRIVON: And it would still be administered
23 through the ISO's day-ahead market?

24 MR. GARRIS: That's correct.

25 CHAIRMAN DUNN: Mr. Garris, I want to follow-up
26 here as we try to narrow what's the dispute between the various
27 entities involved here.

28 I know you've been sitting in the back, listening

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01 to all the testimony. And it's been, I'm sure, an
02 excruciatingly long afternoon.

03 You heard, I'm assuming, Mr. Alaywan's testimony
04 regarding a request for certain data that I believe he
05 referenced a timeframe last January, and that that request had
06 come from you.

07 Did you hear that testimony?

08 MR. GARRIS: I heard Mr. Alaywan's testimony. I
09 apologize that I don't remember the part about January. I do
10 remember some of the conversations we had.

11 If you'll go through it, I'll answer the
12 questions.

13 CHAIRMAN DUNN: Let me state it in a different
14 way then.

15 Did you make a request of anyone at ISO,
16 including Mr. Alaywan, for ISO to provide certain information to
17 CERS that was not available to other market participants?

18 MR. GARRIS: The answer to that is yes. The most
19 specific information that was requested was the amount of energy
20 that would be available in the BEEP stack so that we could
21 procure the least cost energy on behalf of California
22 ratepayers.

23 This was done as part of a procedural agreement
24 between the California ISO and CERS in an effort to get least
25 cost energy.

26 CHAIRMAN DUNN: You refer to a procedural
27 agreement. Tell me about that agreement.

28 MR. GARRIS: There's a procedural agreement where

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01 we agreed to -- if I get the agreement out, I think I could
02 maybe do a better job of explaining what's in it. I don't
03 intend to make this any longer than I have to.

04 CHAIRMAN DUNN: When was this agreement?

05 MR. GARRIS: June 29th was the first time we had
06 the agreement in place. It was an agreement between CERS and
07 California ISO. Mr. Alaywan did participate in that process.

08 CHAIRMAN DUNN: Again, as you're still looking,
09 do you recall when you first made the request to anyone at ISO,
10 including Mr. Alaywan, for this information?

11 MR. GARRIS: Excuse me?

12 CHAIRMAN DUNN: As you're looking, and my
13 apologies for interrupting your review process there, I'm
14 curious of your recollection of when you first made the request
15 to anyone at ISO, including Mr. Alaywan, for the information?

16 MR. GARRIS: It was probably during that period
17 of June, when we were trying to coordinate the operation between
18 CERS and the California ISO. We recognized the need for
19 coordination, and we also recognized the need that, under AB 1X,
20 CERS was required to provide reliable energy at the least cost
21 for the California ratepayers.

22 CHAIRMAN DUNN: So, if the request about that
23 time period, which I assume you're referring to June; right?

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24 MR. GARRIS: Yes, sir.
25 CHAIRMAN DUNN: That there was no request for
26 this data we discussed earlier prior to that time period?
27 MR. GARRIS: I believe that we have made requests
28 for data, but not that specific type of data. I would have to
0138 go back and maybe research to see what information was
01 requested.
02 I do have a copy of the June 29th Real-time
03 Coordination Agreement.
04 CHAIRMAN DUNN: That's the proper name, the
05 Real-time Coordination Agreement?
06 MR. GARRIS: That's correct.
07 CHAIRMAN DUNN: And that was executed in June?
08 MR. GARRIS: June 29th. I think the final
09 version came out sometime in July.
10 CHAIRMAN DUNN: And that was between ISO and
11 CERS?
12 MR. GARRIS: That's correct.
13 CHAIRMAN DUNN: And again, my question is, prior
14 to that time period, June, you don't recall that there were
15 regular requests for this data that we've discussed earlier?
16 MR. GARRIS: I don't know the answer to that.
17 There may have been. Let's see if I can get some help here to
18 answer that.
19 Okay. I believe that we were requesting
20 information from our traders and schedulers through the
21 real-time operation.
22 CHAIRMAN DUNN: I'm not quite sure what that
23 means.
24 MR. GARRIS: What I believe we were requesting at
25 the time was information with respect to how much OOM energy was
26 going to be purchased, and how much energy was going to be
27 credit back in the BEEP stack. We were trying to make a
0139 determination between the two of them which would produce the
01 least cost result for energy procured for California.
02 CHAIRMAN DUNN: And you're referring to this
03 request for this data was made at the June time period.
04 MR. GARRIS: And this specific request for this
05 data was made during the June timeframe.
06 CHAIRMAN DUNN: So, it was made even prior to the
07 execution of the June 29th agreement?
08 MR. GARRIS: That's correct.
09 CHAIRMAN DUNN: Who decided at CERS to make that
10 request of ISO for that information?
11 MR. GARRIS: It was several folks, but myself
12 primarily.
13 CHAIRMAN DUNN: Who else was involved in that
14 decision?
15 MR. GARRIS: We had several other operational
16 folks. I had discussed this with our real-time scheduling
17 manager, Susan Lee. I also discussed it with the then current
18 Deputy Director, Ray Hart, and we were attempting to come up
19 with a least cost solution to dispatch energy.
20 CHAIRMAN DUNN: Anybody outside of CERS that you
21 discussed that request with?
22 MR. GARRIS: Not that I'm aware of at this
23 time.
24 CHAIRMAN DUNN: And the purpose for making that
25 request from CERS' perspective, Mr. Garris, if you could please
26 explain it?
27 MR. GARRIS: Sure. Two reasons why we made the
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01 request. One, as we've stated on a number of occasions,
02 procurement of least cost energy.

03 And two is to get an understanding of what DWR/
04 CERS was going to credit back with respect to dispatches.
05 We didn't request -- and it's important to
06 note -- we didn't request specific bid information on the part
07 of any individual generators. The ISO did say that the best
08 granularity they felt comfortable with was the number of
09 megawatts in the BEEP stack in \$10 increments.

10 To give an example, if incremental energy, and
11 that's the energy that's going to be purchased, was bid in
12 between zero and \$10, and there was 100 megawatts, they would
13 tell us that. If there was additional energy in the range of 10
14 to 20, they would give us the additional energy, but they never
15 gave out specific bids or scheduling coordinators submitting
16 those bids.

17 And it was an attempt to compare the amount of
18 available energy in the BEEP stack that could be dispatched with
19 the amount of energy that might be procured on a real-time basis
20 through OOM to come up with the least cost result.

21 CHAIRMAN DUNN: I think you probably also heard
22 Mr. Alaywan's testimony before, not asking him to draw a legal
23 conclusion, but when the request was made, it was his belief
24 that the sharing of that data would be in violation of certain
25 tariffs and protocols.

26 At the time that you first made the request, did
27 you have an opinion as to whether ISO's sharing of that data
28 would be in violation of any FERC tariffs, protocols, et

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01 cetera?

02 MR. GARRIS: The question certainly crossed my
03 mind. But as part of the discussion with Mr. Alaywan, the
04 amount of information that could be provided by the ISO had to be
05 sufficient to meet their comfort level as well. There was no
06 expectation that they would provide information that they were
07 absolutely prohibited from doing.

08 And the reason they gave it in aggregate, and the
09 reason they gave it in \$10 increments was because they felt that
10 this was the granularity that would give us some indication of
11 the amount of energy in the BEEP stack without violating their
12 tariff.

13 CHAIRMAN DUNN: I believe the testimony of one of
14 the other individuals at ISO was that they were told that if the
15 information was not provided, that CERS would not purchase.

16 Do you agree with that characterization?

17 MR. GARRIS: No, sir, I don't.

18 CHAIRMAN DUNN: You heard what I'm referring to;
19 didn't you?

20 MR. GARRIS: Yes, sir.

21 CHAIRMAN DUNN: But from your perspective, no
22 such statements?

23 MR. GARRIS: The exchanges of information and
24 number of discussions between Mr. Alaywan and myself have been
25 numerous, but I don't recall that on any occasion.

26 CHAIRMAN DUNN: Had ISO refused to provide the
27 information you had requested, what would have been your
28 response?

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01 MR. GARRIS: There wouldn't have been much
02 different than what you see right now. We would have continued
03 to supply energy as and when requested.

04 CHAIRMAN DUNN: Okay.

05 MR. GARRIS: Could I add one more thing?

06 The energy that -- excuse me. The information

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07 provided out of the BEEP stack in \$10 increments was intended to
08 come up with a least cost solution based on some rough economic
09 principles for economic dispatch. That never really
10 materialized.

11 The information itself has not proven to be very
12 useful at all. In fact, if we didn't get that information,
13 based on the agreement between CERS and the Cal ISO, if we
14 didn't receive that information, it would be irrelevant.

15 CHAIRMAN DUNN: Let me make sure I understand
16 that, Mr. Garris, from a lay perspective.

17 What you're saying is, the intent of CERS in
18 making the request originally -- whether it was in the June time
19 period when you recall, or I think January is when Mr. Alaywan
20 referred to, but that's my recollection -- that the original
21 purpose was for determining the procurement of the least cost
22 energy; correct?

23 MR. GARRIS: That's correct.

24 CHAIRMAN DUNN: What you're saying today is,
25 after having received this information for a period of time, is
26 that the information does not assist CERS in trying to procure
27 least cost energy.

28 MR. GARRIS: That's also correct.

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01 CHAIRMAN DUNN: That you believe you could
02 purchase least cost energy without the information.

03 MR. GARRIS: Yes, sir. I think we can do a fair
04 job of doing that.

05 In addition to that, as an alternative, if in
06 fact that information had some relevancy, I would also say that
07 make that information available to the rest of the market
08 participants at the same time.

09 CHAIRMAN DUNN: Now, I'm not going to ask you to
10 discuss something you have no knowledge on, so if you don't,
11 just tell me.

12 The issue of ISO making a determination about the
13 reliability of energy that may exist in the BEEP stack in
14 determining how much of an OOM call to make, have you had any
15 discussions with ISO about that process?

16 MR. GARRIS: I don't have any discussions that I
17 recall directly. But in all the time we've been involved, I'm
18 sure there have been some discussions.

19 The ISO has indicated, in fact -- I don't
20 remember any specific discussions, but the ISO has indicated
21 that its role as the grid operator, and rightfully so, is to
22 maintain reliability. And that the ISO needs to make that
23 determination and use its own methodology to make that
24 determination.

25 CHAIRMAN DUNN: Has CERS or anyone at CERS at any
26 time provided any input to ISO regarding how to make the
27 determination as to reliability?

28 MR. GARRIS: No, sir, not for the determination

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01 of reliability.

02 CHAIRMAN DUNN: Has CERS provided any
03 information, written or oral, to ISO regarding what energy may
04 be bypassed in the BEEP stack?

05 MR. GARRIS: No, we have not.

06 CHAIRMAN DUNN: Any discussions with CERS on that
07 issue at all?

08 MR. GARRIS: No, sir.

09 CHAIRMAN DUNN: Mr. Drivon.

10 MR. DRIVON: I do have some questions.

11 Is CERS a scheduling coordinator?

12 MR. GARRIS: I believe CERS is a scheduling

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13 coordinator. I heard that discussion earlier. CDWR has signed
14 the scheduling coordinator agreement with the California ISO.
15 It has two scheduling coordinator IDs. It's not a unique
16 situation within the ISO grid. Several entities have multiple
17 scheduling coordinator IDs.

18 CERS schedules energy under AB 1X to fill the net
19 short position of the investor-owned utilities in California.
20 Under the scheduling coordinator CDWR, the State Water Project
21 schedules the loads and resources necessary to manage the
22 California Aqueduct.

23 MR. DRIVON: CDWR would be a scheduling
24 coordinator with or without AB 1X.

25 MR. GARRIS: It was prior to AB 1X, that's
26 correct, and is.

27 MR. DRIVON: Has CERS signed a scheduling
28 coordinator agreement?

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01 MR. GARRIS: No, we have not.

02 MR. DRIVON: Why not?

03 MR. GARRIS: I don't believe it's necessary.

04 With the issuance of the second scheduling coordinator ID,
05 we're permitted to schedule.

06 MR. DRIVON: You say that what you asked the ISO
07 for was information on what energy was in the BEEP stack?

08 MR. GARRIS: Information of available energy in
09 the BEEP stack as to price and quantity, that's correct.

10 MR. DRIVON: Well, I'm a little bit confused
11 because Mr. Alaywan said that his understanding was that he was
12 under direction to give you information before the BEEP stack
13 became visible.

14 MR. GARRIS: That's a -- it's not unrelated, but
15 it's some what distinct. I think that I've watched a number of
16 folks try to explain some of the nuances of the market, but I
17 think I can give you at least a start on explaining or
18 understanding it.

19 The timeliness of the information that's supplied
20 to CERS for scheduling purposes is the result of two
21 requirements, not just the least cost, but also reliability.

22 As you've heard a number of folks say, the bulk,
23 substantial majority of energy scheduled as OOM by CERS is on
24 the inter ties. And inter ties, and especially control areas
25 adjacent to the California ISO, the folks that actually control
26 the interconnections, the electrical interconnections, have
27 somewhat different scheduling rules. You've even touched on the
28 10-minute intervals in the BEEP stack.

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01 What happens is, in order to be able to manage
02 and schedule a large volume of energy on the inter ties, you
03 need as much lead time as you can going into the hour in which
04 the energy is actually going to flow.

05 The requirement to arrange the transaction with
06 the counter party and secure sufficient transmission, coordinate
07 that transmission, and actually check and verify schedules
08 before the schedules are implemented put pressure on the
09 timelines with which interchange schedules, in this case OOM
10 energy, can be scheduled. If there's a large volume of energy,
11 the more advanced notice that you receive, the better able you
12 are to get the quantity of energy. If the notice for the energy
13 is delayed until real-time, and I think Mr. Detmers alluded to
14 this somewhat, is that the ability to secure energy on the inter
15 ties is limited. I wouldn't say that you couldn't get energy in
16 mid-hour, but it becomes very difficult, and the reliance on
17 generators inside the grid becomes -- the California ISO becomes
18 more dependent on those generators.

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19 So, to sum it up, if you have a large amount of
20 energy to be scheduled, you need as much advanced notice. If
21 you're going to do a small amount, you can delay that.

22 I also heard from several folks about the timing
23 of the BEEP stack, I think Mr. Alaywan. If the BEEP stack were
24 advanced, I think that'd be a step in the right direction.
25 Release the information to the rest of the world at the same
26 time you're giving the information to CERS.

27 If in fact the BEEP stack could be more
28 effectively utilized and produced cheaper prices, I think it

0147 would be a good thing.

01 MR. DRIVON: Let me ask you a question on that
02 point.

03 Do you think it's a good idea that the amount of
04 energy that's presently being supplied by out-of-market
05 purchases, do you think that's a good idea in terms of system
06 design?
07

08 MR. GARRIS: I don't know that I'd characterize
09 it as a good idea. I don't know that it's necessarily bad
10 either.

11 What you have is a combination of an attempt to
12 de-regulate the market, coupled with a grid outside of
13 California that still operates on the hourly scheduling between
14 control areas and the supply of energy.

15 And at this point in time, unlike some of the
16 characterizations, I think we have Department of Market Analysis
17 information and our own information that we've developed to show
18 that the OOM energy is not more expensive than the BEEP energy,
19 but is, in fact, considerably less.

20 I believe that the DMA information from January
21 through June is somewhat aggregated and may, in fact, not
22 represent an accurate portrait of what the energy costs and --
23 probably the totals are probably accurate, but at least the
24 cost.

25 I think we have some additional information here
26 that at least from the period of time when the DMA, Department
27 of Market Analysis, information has been de-aggregated, it shows
28 that OOM purchases have been less expensive than BEEP

0148 incremental energy, and OOM sales have produced a greater return
01 of energy than the BEEP dispatchers. In fact, information that
02 we have indicates that BEEP decs for the month of August were
03 paid on average a dollar a megawatt to take energy from
04 California generators were exported someplace else.

05 MR. DRIVON: Recently, the load in California has
06 been in the 30-35,000 megawatt range; correct?

07 MR. GARRIS: Nominally, close enough.

08 MR. DRIVON: And if I understand it, the capacity
09 available within California is generally recognized to be
10 somewhere in the 45-50,000 megawatt range; is that correct?

11 MR. GARRIS: That's probably accurate for all of
12 California. I'd let the folks at the ISO give you more detailed
13 explanation, but I think the amount available to the Cal ISO is
14 more like about 39-42,000.

15 MR. DRIVON: Okay, let's take 39-42 versus 30-35.
16 If those numbers are right, why do we have to go out of market
17 at all? Why isn't there enough energy in California? Do we
18 have a capacity problem? Do we have a problem with economics?
19 Do we have a problem in market design? Where's the problem?

20 MR. GARRIS: I think you could probably take
21 elements of all three and come up with an answer to that.

22 One of the primary results, I think Mr. Detmers
23 might have touched on it, one of the primary results of de-
24

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25 regulation is that generation installed in California does not
26 have to serve California load.

27 I don't have the most accurate -- what you have
28 to understand is that in a de-regulated market, that energy can

0149 01 be sold to any load, to any place within the Western grid, and
02 in fact, does not have to operate.

03 I think there was -- also Mr. Detmers touched
04 briefly on the must-offer conversation that he had with FERC
05 today.

06 So, when you add up the total amount of
07 generation that's available in California, you can't assume that
08 that generation is on line and willing to -- one, you can't
09 assume that it's on line. And two, that you can't assume that
10 it's going to serve load in California.

11 MR. DRIVON: Have you folks studied that issue?

12 MR. GARRIS: We've done some studies with respect
13 to the net short. That's more of a grid problem. It's not that
14 we're unaware of the condition. You know, I think everybody
15 that's involved in grid operations knows about it, but CERS, the
16 primary role for CERS is the net short of the investor-owned
17 utilities, and to secure that amount of energy.

18 MR. DRIVON: At the cheapest possible price.

19 MR. GARRIS: Yes, sir.

20 MR. DRIVON: And I'm having trouble with the idea
21 that if you've a bucket that needs 30-35,000 megawatts, and
22 you've got a faucet that can supply 40,000 megawatts, that you
23 can't get the bucket full.

24 MR. GARRIS: The answer to that is fairly
25 complex. Again, in a de-regulated market, for whatever business
26 decision that the generator chooses, they can elect to supply
27 load in California, they can elect to supply load outside of the
28 California grid, or they can elect to shut down for economic

0150 01 reasons.

02 MR. DRIVON: Okay, and if they were not supplying
03 the energy that they were capable of supplying, not supplying
04 the capacity they were able to supply for those reasons you've
05 just said, then the net effect of that could be higher prices
06 because the energy's obtained in the spot market.

07 MR. GARRIS: That's one possible outcome.

08 MR. DRIVON: And so that could be another way
09 that the market currently could be manipulated.

10 MR. GARRIS: That's a difficult question to come
11 and put your finger on and say that the market is being
12 manipulated.

13 What the market design allows is individual
14 generators that don't have, presumably don't have market power,
15 to exercise their judgment with respect to the price signals or
16 the current market. And if in fact they think they're not going
17 to get the return that their business plan requires, they can
18 elect to shut down.

19 And it's in the design of the current market.
20 It's not an issue of even gaming at that point.

21 MR. DRIVON: With respect to market power, does
22 CERS have market power in California in the wholesale energy
23 market?

24 MR. GARRIS: I don't believe we do at all.

25 MR. DRIVON: What definition do you use, as an
26 expert in this market, to define market power?

27 MR. GARRIS: I don't have an expert definition of
28 market power right now, but I guess we could look one up, and we

0151 01 could see what the requirements were Under AB 1890, and we could

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02 apply that to the current conditions.
03 MR. DRIVON: Well, you've been in the market for
04 a long time. You don't have a definition of market power?
05 MR. GARRIS: I don't have a definition of market
06 power in my pocket, sir.
07 MR. DRIVON: And you're saying that if this
08 information that's been passed to you preferentially had not
09 been passed, basically there would have been no different
10 conduct by CERS; is that correct?
11 MR. GARRIS: That's correct.
12 MR. DRIVON: Well, did you read Mr. Detmers'
13 deposition?
14 MR. GARRIS: No, sir, I haven't.
15 MR. DRIVON: I think Mr. Detmers told me in his
16 deposition that he was told by you that if you didn't get the
17 preferential information that you were demanding, that you were
18 going to stop backing the market.
19 Did you tell him that?
20 MR. GARRIS: No, sir.
21 MR. DRIVON: You didn't tell him that?
22 MR. GARRIS: No.
23 MR. DRIVON: So he must have misreclected on
24 that point?
25 MR. GARRIS: Did not tell him that.
26 MR. DRIVON: So then, if the ISO stopped tomorrow
27 -- I mean, several people have agreed that what's happening may
28 be in violation of the tariffs -- if they stopped tomorrow
0152 supplying that information to you, it'd be okay would you folks
02 in terms of your conduct; is that right?
03 MR. GARRIS: What information are you referring
04 to?
05 MR. DRIVON: Any preferentially supplied
06 information.
07 MR. GARRIS: That'd be an impossible situation,
08 and let me give an example.
09 If they were to discontinue giving us the 10-
10 minute -- excuse me, the BEEP stack information on \$10
11 increments, it wouldn't have any impact whatsoever.
12 But if the ISO were to request CERS to make an
13 out-of-market purchase or an out-of-market sale, it would have
14 to give us the quantity and location in order for us to know
15 which amount and location to make the sale or purchase from.
16 MR. DRIVON: Don't the tariffs require that they
17 make the out-of-market purchases?
18 MR. GARRIS: The tariff would normally require
19 them to make an out-of-market purchase, and I don't believe the
20 tariff ever anticipated a state entity stepping in to fill the
21 credit-worthy void.
22 That's one of the -- in fact, that's a good
23 point. It's one of the problems that we have with respect to
24 the ISO tariff and CERS obligation under AB 1X. They clearly
25 don't align one hundred percent.
26 We want reliable least cost energy. The ISO has
27 a tariff that's left over and anticipated a number of components
28 that are no longer in the market, two of which are credit-worthy
0153 investor-owned utilities, and the third being the Cal PX.
02 MR. DRIVON: Are you aware of any efforts that
03 have been made to reconcile the current tariff obligation of the
04 ISO to make those OOM purchases versus what you're saying the
05 real world situation is now?
06 MR. GARRIS: Could you restate that again,
07 please?

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08 MR. DRIVON: As I understand it, the tariff today
09 requires the ISO make those OOM purchases. Isn't that what the
10 language of the tariff requires?

11 MR. GARRIS: I believe that the ISO tariff
12 indicates that the ISO can make OOM purchases.

13 MR. DRIVON: No, doesn't it require them to do
14 it? Doesn't it designate them as the entity that's to make OOM
15 purchases?

16 MR. GARRIS: I really don't know the answer to
17 that. It's quite possible that the tariff is very specific and
18 says for the ISO to make the OOM purchases.

19 MR. DRIVON: But you're saying that with the
20 legislation under which you are operating, that you're obligated
21 to provide energy on a least cost basis. And that may be at
22 odds with the tariff, which was in place before the new
23 situation came into effect; correct?

24 MR. GARRIS: That's correct, but FERC has also
25 acknowledged the DWR/CERS role as a credit-worthy entity in the
26 process of procuring this energy. So, while it was
27 unanticipated, it's not unknown on the part of FERC.

28 There is an acknowledgement on their part that we
0154 do have a role in this. And the fact is that we have been since
01 January purchasing OOM energy at the instruction or request of
02 the ISO because the market participants would not sell OOM
03 energy to the ISO.

04 MR. DRIVON: It seems to me that there may be
05 some conflict between what's taking place actually today with
06 respect to who's making OOM purchases, versus what the tariff
07 requires. Would you agree?

08 MR. GARRIS: I'd agree to that.

09 MR. DRIVON: And my question then is, are you
10 aware of what if any efforts have been made to reconcile that
11 conflict?

12 MR. GARRIS: From the CERS' perspective, one of
13 the things that we've been requested to do is procure this net
14 short energy for some interval of time.

15 Under AB 1X, which I believe sunsets on January
16 1, 2003, the anticipation is that CERS would procure this net
17 short energy until such time that the investor-owned utilities
18 became solvent and were in fact able to do those types of
19 purchases for themselves.

20 So, with respect to what's been done, I think
21 we're all working in that direction. To the extent that we can
22 accomplish that, or to the extent that the investor-owned
23 utilities could again become solvent and make those purchases,
24 DWR/CERS would back away from that.

25 MR. DRIVON: I think the translation of your
26 answer is, you're not aware of anything that's been done to
27 reconcile this conflict. You're just proceeding.

0155 01 CHAIRMAN DUNN: Other than put --

02 MR. GARRIS: I think what we're doing --

03 CHAIRMAN DUNN: Hold on, Mr. Garris. I don't
04 want to leave a false perception here.

05 Other than trying to put the investor-owned
06 utilities back into their buying shoes.

07 MR. GARRIS: Which is extremely important. I
08 guess the best way to describe it is, we are aware of it. We
09 are buying time, so to speak, until that occurs.

10 MR. DRIVON: Well, has CERS, for instance, filed
11 or participated in any filing with the FERC to change the tariff
12 to allow CERS to operate in this capacity?

13 MR. GARRIS: I don't believe that FERC -- we have

14 filed FERC on any tariff amendment to change this to the best of
15 my knowledge, and I'll ask for some help or defer on this one.
16 I believe that CERS as a state agency is not FERC
17 jurisdictional.

18 MR. DRIVON: Well, that's why I said "or
19 participated in."

20 MR. GARRIS: We have -- we have participated or
21 provided information in FERC proceedings, but to my knowledge we
22 haven't participated in a tariff amendment to somehow or another
23 change the status of CERS.

24 And let me say, it wouldn't be unwilling to
25 explore the possibility.

26 MR. DRIVON: Would it be okay with CERS if
27 tomorrow, the ISO reassumed its tariff obligation and made OOM
28 purchases itself?

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01 MR. GARRIS: It would be okay with the CERS.

02 The question is, whose credit would the ISO use?

03 MR. DRIVON: Well, the next question would be,
04 would CERS continue to back purchases made in that fashion?

05 MR. GARRIS: It's unlikely that CERS would
06 continue to make purchases back in that fashion.

07 MR. DRIVON: So, either CERS makes purchases in
08 the OOM market, or the backing isn't there?

09 MR. GARRIS: Well, that's probably what you
10 would -- the possible outcome, that's the most probable outcome
11 in that condition.

12 And again, AB 1X tells CERS to procure the net
13 short.

14 MR. DRIVON: Do you know what the Federal Power
15 Act requires with respect to following the tariffs?

16 MR. GARRIS: Not specifically. Is there --
17 again, we're not trying to do anything to contravene or go
18 against the Federal Power Act. We're trying to fill an interim
19 role that was unanticipated by anybody when the ISO tariff was
20 created, and that's the role we're trying to fill at this point
21 in time.

22 MR. DRIVON: One short series of questions and
23 then I'm finished.

24 I understand that most of the long-term contracts
25 were for six 16 blocks; is that correct?

26 MR. GARRIS: They vary. Some are for seven by
27 24; some are for six by 16. Some provide off-peak and non-peak
28 energy at varying amounts.

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01 MR. DRIVON: In terms of the seven 24s or six 16
02 blocks, what happens to the shoulder energy?

03 MR. GARRIS: The shoulder energy is scheduled
04 against the IOU load.

05 I think the best way to maybe clarify this would
06 be to explain it as follows. The long-term contracts provide
07 about 45 percent of the net short energy required, including the
08 shoulder hours. It's not a hundred percent. It doesn't put us
09 over in an over-supply condition, if that's the question you
10 were intending to ask.

11 MR. DRIVON: No, I think I got the answer, and
12 that's that the shoulder energy is scheduled against load.

13 MR. GARRIS: Yes, sir; that's correct.

14 MR. DRIVON: It may be used, it may not.

15 MR. GARRIS: The assumption is that if it's
16 scheduled against load, the load consumes the energy.

17 MR. DRIVON: Thank you.

18 CHAIRMAN DUNN: I want to go back to when you
19 first made the request to ISO for the data.

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20 How did that data assist you, referring to CERS,
21 in determining where to purchase or how to purchase the least
22 cost power?

23 MR. GARRIS: I'm trying to frame an answer. I
24 apologize. I want to make sure I answer the question the way it
25 was asked.

26 If I understand your question correctly, in order
27 to be able to get least cost power, what you need is information
28 with respect to the amount of power that's required to be

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01 purchased and the location. And if you have that information
02 available, what you can do is go out in the regular or
03 alternative competitive marketplace, the one that's outside of
04 the California grid, go out and secure that energy as a
05 bilateral OOM transaction.

06 I'm not sure if I answered your question
07 correctly. I apologize if I didn't.

08 CHAIRMAN DUNN: My understanding from your
09 earlier testimony is that you made the request to ISO for the
10 information that we've talked about because CERS wanted to be
11 able to secure the least cost energy in the OOM purchases;
12 correct?

13 MR. GARRIS: That's correct.

14 CHAIRMAN DUNN: So my question is, how does the
15 data that you did request relate to such a goal?

16 MR. GARRIS: Okay, I think I can answer your
17 question more directly now.

18 I think Ziad Alaywan mentioned sort of a
19 two-bucket system where you have two separate buckets. What you
20 have is energy available from the BEEP stack, and you have
21 energy available from out-of-market purchases. In each case, I
22 think, the ISO tried very hard to describe that they could
23 anticipate certain amounts of energy being available in the BEEP
24 stack and how difficult it was.

25 You can also anticipate, based on your working
26 knowledge, the amount of energy that would be available
27 bilaterally out-of-market from other market participants.

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To the extent that you know how much is available
01 in the BEEP stack, or how much you would acquire and at what
02 price, and if you know how much is available from that second
03 bucket or the OOM, you could combine or make a comparison
04 between the two of them to secure an amount of energy from the
05 BEEP stack and an amount of energy from bilateral transactions
06 that would be sufficient to meet the reliability requirements of
07 the grid, and at the least cost.

08 CHAIRMAN DUNN: Okay. Was there ever an
09 assessment done by CERS that they were in fact achieving the
10 goal that you stated was the purpose for asking for the
11 information?

12 MR. GARRIS: I believe that CERS has done
13 numerous assessments of its position and the net short
14 requirements on a short-term and a long-term basis.

15 The information that would be provided -- and
16 again, I apologize if I don't answer the question directly. I
17 will try to answer the question directly -- the information
18 that's compiled by CERS would be used to determine how much
19 energy in addition to the long-term contracts -- of course, when
20 we were first starting out it was how much energy could be
21 procured in long-term contracts -- and then how much additional
22 energy should be procured on a forward basis to match the loads
23 and resources forecast given to us by the investor-owned
24 utilities.

25

CHAIRMAN DUNN: Let me ask it a different way,

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Mr. Garris. Maybe we can get at the same point.

You heard Mr. Drivon earlier go through some figures on a month-by-month basis showing that in fact the

monthly BEEP price was substantially less in a number of those months than the monthly OOM purchases. In fact, there was a small amount of BEEP purchased and a large amount of OOM purchased.

That would suggest to the lay person looking at this that your stated goal of finding cheaper power by requesting that information was not successful.

Am I incorrect in my lay person's observation?

MR. GARRIS: Like all other answers, it's not a simple yes or no.

CHAIRMAN DUNN: I didn't think it would be.

MR. GARRIS: I apologize, Senator.

CHAIRMAN DUNN: No apology necessary.

MR. GARRIS: The information that we have, the disaggregated information that we have from the Department of Market Analysis suggests that we have been somewhat successful. The price of OOM energy in the bilateral markets is significantly less than the price of energy in the BEEP stack.

I believe we sent some exhibits over earlier in the day, and I have two of them in front of me, showing the last four months for which I have deaggregated information. That's July through October of this year.

And the price differentials appear to be increasing as we go out in time. That is, the difference between BEEP energy and OOM energy, the price of OOM energy is decreasing compared to BEEP energy.

I don't want to suggest that this is as far as it can go, or that this is the only way it could be, but it appears

that in combination with the long-term contracts, the shorter term contracts that we mentioned, the monthlies and the quarterlies, and the bilateral transactions that we do on a daily basis, there is less and less energy being procured in the OOM market.

And I think we are being successful in lowering prices of energy that we purchase, and in fact, of backing out of the OOM market as we go forward. I think this may go a little further to the previous question.

In March, we had some questions that were given to us in anticipation of answering those questions. We prepared some charts. Hopefully, they're a little easier to digest than some of the detailed explanations.

But in March, we purchased a little over 2 million megawatt hours of OOM energy. In June, we were down to 776,000 megawatt hours. As of October, we're down to 186,000 megawatt hours of OOM energy. That's a 90 percent reduction in our participation in the OOM market.

It would be silly for us to bypass lower cost energy in the BEEP stack than we could ever get out of the OOM -- that we could get as bilateral OOM transactions. If in fact the BEEP stack was less expensive, it would be absolutely the way to go. I think it's more manageable from a perspective of the ISO.

If they don't have a third party that they have to contact and have us secure energy, as I alluded to earlier, just the process of arranging the energy into the grid takes some time, and if it's not done fast enough or in a timely

manner can impede reliability.

CHAIRMAN DUNN: Is it your testimony, Mr. Garris,

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03 that if a hypothetical generator, Generator X, lodges a
04 complaint that on a given time I had less expensive power in the
05 BEEP stack than was ultimately purchased via OOM, and my cheaper
06 power was bypassed, is it your testimony that CERS had nothing
07 to do with the decision to bypass that energy in the BEEP stack
08 and go out-of-market?

09 MR. GARRIS: Yes.

10 CHAIRMAN DUNN: From your perspective, CERS had
11 nothing to do with it?

12 MR. GARRIS: That's correct.

13 MR. DRIVON: This CERS-ISO real-time coordination
14 agreement of June 29th.

15 MR. GARRIS: Yes, sir.

16 MR. DRIVON: Do you at CERS consider this to be a
17 confidential document, or is it a document that the public can
18 have access to?

19 MR. GARRIS: The public can have access to the
20 document.

21 MR. DRIVON: My next question is, a couple of
22 months ago, we heard a lot of press reports about some of the
23 long-term contract energy being sold at a very substantial
24 loss. We haven't had any reports of that recently.

25 Does that situation continue from time to time,
26 or have you figured out a way to work that out?

27 MR. GARRIS: What I believe was characterized as
28 long-term contract energy being sold at a substantial loss was
0163 only partially accurate.

01 The majority or the bulk of the CERS sales are
02 done as real-time OOM sales, and they're done at the direction
03 of the ISO.

04 Again, it's not the contract energy that's being
05 re-sold. It's all those things that I described a little bit
06 earlier, generators that are over-supplied, load that's over
07 forecast, infeasible schedules, insufficient regulation in the
08 grid, congestion, those types of things.

09 The substantial majority or bulk of those sales
10 that were made by CERS were done for those reasons.

11 I don't have the records in front of me, but I
12 believe less than one percent of our contract energy was sold
13 back into the market after it had been procured. I'd have to
14 confirm that.

15 MR. DRIVON: To the extent that the press was
16 accurate, I guess that would be the one percent, which means
17 that you were, I guess, 99 percent successful.

18 Does that situation continue, or has it been
19 changed?

20 MR. GARRIS: From time to time, we do make sales
21 in the forward market.

22 What we tried to do in the day-ahead and the
23 hour-ahead market is get as close to the scheduled loads that
24 are given to us by the IOUs as we can.

25 The IOUs give us daily and updated forecasts.
26 They give us rolling seven-day forecasts of their projected net
27 short. That's the amount of energy that they're going to have
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01 that can't meet their projected load, and they revise those on a
02 daily basis.

03 The last IOU to get into shorter term load
04 projections was PG&E, but they have subsequently begun to do
05 that as well.

06 MR. DRIVON: Okay.

07 MR. GARRIS: Did I answer your question.

08 MR. DRIVON: I think you did.

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09 The other question is, how accurate have those
10 day-ahead load projections been over the last couple of months?
11 MR. GARRIS: They've been getting a lot better
12 than they were in the beginning. Again, we've trended the
13 accuracy of the load forecasts, and they have been getting
14 better.

15 One of the -- one of two things that I think
16 really affected the ability of the normal load forecasting on
17 the investor-owned utilities is, one, was the fact that CERS was
18 another entity that was supplying energy to their loads, and
19 they weren't, I don't think, completely on top of factoring that
20 in there on a forecast basis. And I think they've gotten better
21 at that.

22 And the second thing was some of the more unusual
23 weather patterns and associated conservation, which was really
24 significant this summer. I think the conservation in and of
25 itself would have been enough to force some considerable load
26 forecast errors.

27 CHAIRMAN DUNN: All I want to do at this point
28 is, we've had a lot of testimony. If there's any short

0165 follow-up commentary that any of the ISO witnesses that were
01 here want to make, or any of the Mirant, Reliant
02 representatives, we open that up for invitation for anyone that
03 wants to make a comment.

04 Ms. Formanek.

05 MS. FORMANEK: Senator, thank you.

06 I think what we'd like to do, because there are
07 so many threads of this today -- I think the strand in the
08 spaghetti bowl -- we will respond to some of these things in
09 writing, and we'll share it with everybody.

10 But there is, I think, one thing we do want to
11 take up. I understand there's an offer from CERS that if we
12 stop providing the \$10 BEEP increment information, everything is
13 fine. We would love to stop providing that, and we will.

14 MR. GARRIS: We agree.

15 MS. FORMANEK: Midnight tonight.

16 MR. GARRIS: We agree. It's not a problem.

17 MR. DETMERS: Thank you.

18 CHAIRMAN DUNN: That was it?

19 MR. DRIVON: What do you know? We did something.

20 MS. FORMANEK: Thank you.

21 CHAIRMAN DUNN: Was that all you had

22 Ms. Formanek.

23 Jim, did you want to add something?

24 MR. DETMERS: Yeah. The only additional thing is
25 the with regard to some of the your statements on the
26 out-of-market purchases.

27 Have you indicated that you would be willing to
0166 back the ISO's procurement of those out-of-market purchases, or
01 is that something that you're still going to require the ISO to
02 go to CERS for those purchases?

03 MR. GARRIS: And the answer to that, Jim, is I
04 don't believe that we are authorized to do that. I will, in
05 fact, try to look into that or have some internal discussions,
06 but I believe AB 1X specifically requires CERS/DWR to do that.

07 CHAIRMAN DUNN: My only request on this issue is,
08 Pete, I hear you saying you will look into it. I know that's
09 really ISO-CERS issue, but if you could keep me posted on what
10 the decision is, it would be greatly appreciated.

11 Anything further, Jim.

12 MR. DETMERS: No.

13 CHAIRMAN DUNN: With that, I'm going to extend an
14

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15 offer inform all of the individuals and entities that testified
16 today, including Mirant and Reliant, all the ISO folks, and of
17 course to CERS, if there's any follow-up commentary you want to
18 make, we will welcome that via letter. Be advised though, of
19 course, that the letter will be made available, since this was
20 an open hearing. Any follow-up we feel must be done the same
21 way so that anybody who wants access can do it. But we
22 certainly would welcome any follow-up.

23 You are correct, Ms. Formanek. We did wind
24 through a lot of different threads here, and I know we could
25 probably spend another 24 hours trying to respond to all of
26 those.

27 So, let me extend a thank you to all of the
28 witnesses and counsel that appeared today. I know it was a long

0167 day and greatly appreciated. It certainly helped in our
01 understanding. We're the first to admit we still have a ways to
02 go.

03 Any last comments, Mr. Drivon?

04 We are recessed, but the record will remain open
05 for follow-up input via letter submissions. As I said, they'd be
06 greatly appreciated.

07 Thank you, everybody, for your patience in this
08 long day today. Thank you.

09 [Thereupon this portion of the
10 Senate Select Committee hearing
11 was terminated at approximately.
12 6:35 P.M.]

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0168 CERTIFICATE OF SHORTHAND REPORTER

01 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
02 of California, do hereby certify:

03 That I am a disinterested person herein; that the
04 foregoing transcript of the hearing of the Senate Select
05 Committee to Investigate Price Manipulation of the Wholesale
06 Energy Market was reported verbatim in shorthand by me, Evelyn
07 J. Mizak, and thereafter transcribed into typewriting.

08 I further certify that I am not of counsel or
09 attorney for any of the parties to said hearing, nor in any way
10 interested in the outcome of said hearing.

11 IN WITNESS WHEREOF, I have hereunto set my hand this
12 _____ day of _____, 2001.

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EVELYN J. MIZAK
Shorthand Reporter